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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 126

WILLIAM MILLER, PETITIONER,

VS.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 2, 1957

CERTIORARI GRANTED MAY 13, 1957

SUPREME COURT OF THE UNITED STATES

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[fol. 1]

[File Endorsement Omitted]

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA, CRIMINAL DIVISION**

Grand Jury Number 407-55

Criminal Action Number —

WILLIAM MILLER, BESSIE BYRD, Plaintiffs,

VS.

UNITED STATES OF AMERICA

MOTION TO QUASH AND TO SUPPRESS — Filed March 30, 1955

Comes now the above defendants, by and through their attorney, J. Leon Williams, and moves this Honorable Court to:

1. Quash the arrest of the above defendants, March 25, 1955.
2. Suppress the illegally seized evidence, which was obtained by the illegal arrest and search of the defendants premises.

And in support therefor, defendants state these grounds:

1. The arrests were illegal in that the officers had no knowledge, that the defendants or either of them, had violated any law at the time of the defendants' arrest.
2. The officers did not have a warrant for the arrest of either of the defendants.
3. That the premises of the defendants were forcibly broken into and entered, and searched, in violation of defendants' rights under the Fourth Amendment.
4. That certain marked money (evidence) was illegally seized in the premises, after officers had searched the defendants' premises for over two hours.
5. That the officers had no arrest warrant or search warrant for the defendants or the premises, and were exploratory.

And for such other reasons as will be urged upon the Court, at the oral hearing of this motion.

J. Leon Williams, Attorney for the Defendants, 2000
9th Street, N. W., HU 3-6350.

[fol. 2] CERTIFICATE OF SERVICE (Omitted in Printing)

POINTS AND AUTHORITIES

1. Gatewood vs. United States, United States Court of Appeals Number 11-740.
2. United States vs. Wrightson, United States Court of Appeals, March 10, 1955.
3. Go-Bart Co. vs. United States 51-S, Ct., 153.
4. Fourth Constitutional Amendment.

[fol. 3-5] [File Endorsement Omitted]

AFFIDAVIT IN SUPPORT OF MOTION—Filed March 30, 1955

William Miller and Bessie Byrd, being first duly sworn on oath depose and say that:

1. They are citizens of The United States and residents of the District of Columbia.
2. That at about four (4) o'clock, A.M., on the morning of March 25, 1955, they were awakened in their #1 Apartment, located at Columbia Road, N.W., Washington, D. C., by the noise created by some one breaking in a doorway in the hallway, leading to their apartment (only), and that upon his cracking his door (with a chain thereon), to ascertain the origin of said noise, that officers Wilson, Pappas and four others did break the chain off of the door, and forcibly enter his apartment.
3. That he was physically assaulted by Agent Wilson, who struck him about the shoulders, chest and stomach with his fists, which caused him great and grave pain.
4. That he did there and then demand to see the warrant,

if any there was, which said officers should have; but that each time he requested to see the warrant, that he struck in the mouth and beside his head.

5. That the entire premises (apartment) were ramsacked and searched by the officers aforesaid; without the affiant's consent, and in violation of their rights under the Fourth Amendment.

Subscribed and sworn to before me this 29th day of March, 1955. Alice B. Brantley, Notary Public, D. C. Commission expires 15. March, 1959.

William Miller, Bessie V. Byrd.

DISTRICT OF COLUMBIA, ss: (For Bessie V. Byrd only).

Subscribed and sworn to before me this 29th day of March, 1955.

My Commission Expires Sept. 20, 1959: Mary G. Conner, Notary Public, D. C.

[fol. 6-7] IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA.

[Title omitted]

Washington, D. C.

Transcript of Proceedings on Motion to Quash and Suppress—April 7, 1955

The above-entitled matter came on for argument on motion to quash and to suppress before the Honorable Alexander Holtzoff, United States District Judge, at 11:15 o'clock a. m.

APPEARANCES:

On behalf of the United States: Alexander Stevas, Esq., Assistant United States Attorney.

On behalf of the defendants: J. Leon Williams, Esq.

The Deputy Clerk: The case of Bessie Byrd and William Miller. Mr. Stevas and Mr. J. Leon Williams.

Mr. Stevas: Ready for the Government.

Mr. Williams: Ready for the defendants.

The Court: You may proceed.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Williams: If it please the Court, this is a motion to quash and suppress.

The Court: To what?

Mr. Williams: A motion to quash and suppress.

The Court: A motion to quash what?

Mr. Williams: The arrest.

The Court: We don't quash arrests. The arrest has taken place. We sometimes quash a warrant.

Mr. Williams: There was no warrant in this case.

The Court: We can't quash an arrest. I will hear a motion to suppress.

Mr. Williams: Very well, Your Honor.

If Your Honor please, the affidavits of the defendants in this case, Bessie Byrd and William Miller state that at about four o'clock in the morning on March 25th that they were in their apartment at 1337 Columbia Road, Northwest, at which time they heard some unseemly noises out in the hallway. That is, 1337 Columbia Road, Your Honor, is an apartment building. It is divided up into numerous [fol. 9] apartments from the basement up to the fourth floor, third or fourth floor. Each apartment is occupied by different families.

The defendants here occupied—

The Court: Before you go into detail, what do you seek to suppress?

Mr. Williams: If Your Honor will, please, at about 4 a. m. in the morning the officers entered of these defendants and they searched the apartment, and they seized some money.

The Court: You don't say that either in your affidavit or in your motion.

Mr. Williams: In my motion, if Your Honor please, in paragraph H I say that certain marked money—

The Court: Oh, I see.

Mr. Williams: —was illegally seized on the premises.

The Court: That is what you seek to suppress, is the marked money?

Mr. Williams: Yes, Your Honor.

The Court: I want to pinpoint your motion. Just how much money is involved?

Mr. Williams: \$100, Your Honor.

The Court: In bills?

Mr. Williams: Yes, Your Honor.

[fol. 10] The Court: What denominations were they?

Mr. Williams: Some tens and fives and ones, Your Honor.

The Court: They were all marked?

Mr. Williams: Allegedly, Your Honor.

The Court: Very well.

You claim that the entry was without a warrant and without probable cause?

Mr. Williams: Yes, Your Honor.

The Court: I think the burden is on the Government to justify the arrest under those circumstances, it being an arrest without a warrant.

Mr. Williams: Yes, Your Honor.

The Court: Do you admit that this was an arrest without a warrant?

Mr. Stevas: Yes, Your Honor.

Mr. Williams: And the premises, if I may add further, were illegally entered.

Mr. Stevas: The Government doesn't admit that, of course.

The Court: No, of course not. I understand.

Do you wish to add anything to what you have already said?

Mr. Williams: None other than that the premises were illegally entered and the evidence was illegally seized.

[fol. 11]. The Court: I understand your contentions.

Mr. Stevas: Before the Government concedes, I would like counsel, for the record, to state whether or not the motion also applies to the narcotics that were seized in the basement.

Mr. Williams: I would say that this motion is only directed to those premises occupied and claimed by these defendants—

The Court: This is a motion to suppress. The question is,

are you seeking to suppress some narcotics that are seized, or only the money?

Mr. Williams: There were no narcotics seized in this apartment or—

The Court: Will you please answer the question? Is your motion limited to money?

Mr. Williams: Yes, Your Honor.

The Court: Very well.

Mr. Stevas: Does Your Honor care to have a brief opening statement on this?

The Court: Oh, yes, always in these cases, because we can very frequently narrow the issues considerably with opening statements.

Mr. Stevas: The issue here is very simple, Your Honor: Either the officers did or they did not have probable cause to go to the premises to enter and make the arrest and the [fol. 12] search. In this connection, Your Honor, the evidence will show on the part of the Government that these officers in the early morning hours of the date in question received information from an informant who is known to have previously given them reliable information. On the basis of that information they did not go forth to the home of these defendants and break in or make a search. They gave the defendant every benefit of the doubt. They made observations based upon the information that they had received from a reliable informant which showed that this informant made a purchase from a juvenile whose case has been waived, by the way, so I might use his name, juvenile by the name of Shepherd.

The informant's purchase was made from this juvenile, Shepherd, in a definite pattern. A certain modus operandi was established by the informant.

The officers observed this pattern taking place in that the informant met with Shepherd in a taxicab. Shepherd and the informant then preceeded to the informant's home, where they left the informant at his home, while Shepherd went to the defendants' home. He went to the basement where the defendants live, stayed there a few minutes, came out, got back into the same taxicab, and headed back in the direction of the informant. He is stopped, arrested, searched, and the 100 capsules of narcotics which he had been sent there to purchase are found in the taxicab. There

[fol. 13] is no marked money which had been give to this juvenile Shepherd found on his person or in the taxicab.

The officers know the defendants in this case as previous narcotic violators. They know which apartment they are in. They had seen visually, with their own eyes, this go-between Shepherd go down into the place where the defendants lived, the only rooms in the basement being a furnished room, and the room that the defendants occupied.

This being at a very early hour in the morning, they having just effected an arrest in order that this supplier would not have information of this and flee and destroy the evidence and the marked money, they proceeded without a warrant to go to the premises. They knocked on the door, calling the defendant Moses. I believe his name is Moses. They called the name of one of the defendants out, and Officer Wurms announces "Police." The door is ajar, with a chain, as alleged in their affidavit, and the defendant knows or is known to Officer Wurms because he previously has had contact with him. When he sees the officer standing in the hallway, he endeavors to close the door in his face. Officer Wurms' hands were faster than the eye. He had ahold of the door, and he kept going right on in.

They immediately found some of the marked money in the coat pocket of the female defendant.

The Court: Where did the marked money come from? [fol. 14]. Perhaps I lost the chain of your story.

Mr. Stevas: Very well, Your Honor. When the officers first received this reliable information from their informant, they marked \$100 in Government money, and furnished that money to the informant and a clerk of the Treasury Department who went with the informant. The clerk of the Treasury Department turned that marked money over to the go-between Shepherd, the juvenile who went to make the purchase. The money was not on the go-between Shepherd when he was arrested with the narcotics in his possession.

The Court: I am not quite clear what the connection was between Shepherd and these defendants.

Mr. Stevas: Shepherd is the contact man, Your Honor, between the informant and the defendants. Shepherd is the one who personally goes into the premises of the defendants.

The Court: I understand. Did Shepherd buy the narcotics from the defendants?

Mr. Stevas: Yes, Your Honor. Shepherd made the purchase from the defendants. That is the Government's position, that he made the purchase from the defendants, and was arrested in possession of these narcotics. He was not in on this plan or scheme on the night in question.

After finding some of the marked money the officers then made a further search of the premises, which uncovered [fol. 15] the additional marked money, and in the furnace room certain narcotics which are not in question here.

The Court: How much money was seized?

Mr. Stevas: The entire \$100 was taken. The additional \$700 was not marked, and it was not seized, it being the property allegedly of the defendants.

The Court: But the money was seized, the \$100?

Mr. Stevas: \$100 in United States currency which was marked.

The Court: Marked money?

Mr. Stevas: Serial numbers recorded.

The Court: Do you dispute these facts?

Mr. Williams: Yes, I do, materially, Your Honor.

The Court: I will hear the evidence.

Mr. Stevas: I would like to call Agent Wilson.

Thereupon,

FRED EARL WILSON, was called as a witness by the United States and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. Agent Wilson, will you give us your full name and your place of employment?

A. Fred Earl Wilson, Bureau of Narcotics, Washington, D. C.

[fol. 16] Q. Are you employed as a narcotics agent?

A. Yes, sir.

Q. Directing your attention, Agent Wilson, to on or about the early morning hours of March 26th of 1955, did

there come a time when you had an occasion to make an arrest?

A. Yes, sir.

Q. Who was the person that you arrested at that time?

A. Clifford Reed.

Q. And was Clifford Reed known to you?

A. Yes, sir.

Q. What was the basis for your arresting Clifford Reed?

A. We had a United States Commissioner's arrest warrant.

Q. Charging him with what violation?

A. Charging him with violation of the Harrison Narcotics law.

Q. Have you ever had any previous contact with Clifford Reed?

A. Yes, sir.

Q. Have you ever received any information from Clifford Reed in connection with other cases?

A. Yes, sir.

Q. Had that information proved to be reliable to you?

A. Yes, sir.

Q. On this particular morning of March 25th did you [fol. 17] receive certain money from Clifford Reed?

A. Yes, sir.

Q. Will you relate for the benefit of the Court what that information was?

A. Clifford Reed told me that he purchased a hundred capsules of heroin at a time from a man named Roy who lived at 617, or who could be found at 617 M. Street, Northwest.

Q. Is that Roy known by the name of Shepherd?

A. Yes, sir.

Q. Is he a juvenile?

A. Yes, sir.

Q. All right, sir. Would you continue? What other information did you receive from the defendant Reed?

A. He said that he usually went to Shepherd or Roy about three o'clock in the morning, and that he would give him the money to purchase the narcotics, and that Shepherd would go to 1337 Columbia Road, and on several occasions he had taken Roy had taken Reed with him to that address, and he would go into the basement, apartment marked No.

1, and purchase the heroin from Blue, then come back to the cab and give him the heroin, or that on occasion Shepherd would leave him at his apartment and come back to that address at 1337 Vermont Avenue.

Q. Did Clifford Reed tell you who resided in this apartment 1 in the basement at 1337 Columbia Road?

[fol. 18] A. Yes, sir.

Q. What were the names of the persons that he told you resided there?

A. He said Blue Miller and Bessie.

Q. Was Blue Miller known to you?

A. Yes, sir.

Q. How was he known to you?

A. I knew him from previous activities in the narcotics traffic.

Q. Did you have occasion to be connected with the case in which he was convicted for violation of the Harrison Narcotics Act in 1953?

A. No, sir.

Q. Did you know about that conviction?

A. Yes, sir.

Q. Was Bessie known to you?

A. No, sir.

Q. Not personally to you?

A. No, sir.

Q. Do you know whether or not Bessie was known to any of the other officers who were with you?

A. Yes, she was known to Officer Wurms.

Q. Is Officer Wurms out in the witness room?

A. Yes, sir.

Q. All right, sir.

[fol. 19] The Court: Known as what?

By Mr. Stevas:

Q. How was she known to Officer Wurms, do you know?

Mr. Williams: I submit Officer Wurms would be the best one to testify on that.

The Court: Very well.

Mr. Stevas: I have Officer Wurms here for that reason, Your Honor.

By Mr. Stevas:

Q. Was Shepherd previously known to you, this juvenile?

A. No, sir.

Q. But Reed was?

A. Yes, sir.

Q. Now, this arrest of Reed was at what time in the morning?

A. About 1:35 a. m.

Q. And what time did Reed tell you his contact was to be with this Roy Shepherd?

A. He said that he usually made the contact in the early morning hours.

Q. Was this particular morning one of the mornings on which he was to make a contact with Shepherd?

A. Yes, sir.

Q. Did he tell you how many capsules he ordinarily purchased at each time?

[fol. 20] A. Yes, sir, he said he ordinarily bought 100.

Q. Did he tell you how much money those hundred capsules cost him?

A. They cost him a dollar apiece.

Q. A total of \$100?

A. Yes, sir.

Q. Now, acting on that information, Agent Wilson, did you immediately go to the residence of these defendants?

Mr. Williams: I submit Mr. Stevas doesn't have to characterize Officer Wilson's testimony.

The Court: Objection overruled.

The Witness: No, sir.

By Mr. Stevas:

Q. What did you do?

A. We gathered \$100 official Government advance funds and recorded the serial numbers. At 2:45 a. m. I met Agent Pappas and Arthur Lewis, who is a clerk in the Bureau of Narcotics at Sixth and New York Avenue, Northwest, and there we gave the money to Arthur Lewis, and Arthur Lewis and Reed left the area. Reed was—

Q. Reed was your informant?

A. Yes, sir.

The Court: Who is Arthur Lewis?

The Witness: He is a clerk at the Bureau of Narcotics.

[fol. 21] By Mr. Stevas:

Q. Did you see what happened to Arthur Lewis and the informant Reed, what they did or where they went?

A. Not at that time. I next saw them about 3:05 p. m. at Seventh and M Streets, Northwest.

Q. What were they doing at that time?

A. They were hailing a taxicab.

Q. Did they hail a taxicab?

A. Yes, sir.

Q. Where did they go from there?

A. They drove to the 600 block, or they were driven to the 600 block of M Street.

Q. That is about a block away from where they got the taxicab?

A. It's half a block away, sir.

Q. And you observed them from the time they got into the cab until they got out of the cab?

A. Yes, sir. Lewis didn't get out of the cab.

Q. What happened when the cab stopped in the 600 block of M Street?

A. Reed got out of the cab and went back into the entrance to 617 M Street.

Q. Did you know who was in those premises?

A. 617 M Street is where William Miller's mother lives.

[fol. 22] Q. How about Shepherd, do you know whether he was living there or staying there?

A. The only information I had was from the informant Reed, that it was where Shepherd could be located.

Q. After Reed went into the premises, what did you observe next?

A. He was in there just a few minutes, and he came back out with a man who was later identified as Shepherd, and got into the taxicab.

Q. Where was your clerk Lewis at this time?

A. He was in the taxicab.

Q. What, if anything, did you see them do then?

A. The cab proceeded to Seventh Street, and then back to 1335 Vermont Avenue where Reed and Lewis got out of the cab.

Q. Where does Reed live?

A. 1337 Vermont Avenue.

Q. What did you see Reed and Lewis do at that time?

A. They got out of the cab and walked up the steps into 1337 Vermont Avenue.

The Court: Were you following them?

The Witness: Yes, sir.

The Court: In another vehicle?

The Witness: Yes, sir.

By Mr. Stevas:

[fol. 23] Q. Were there other vehicles in addition to yours connected with this observation?

A. Yes, sir.

Q. Did you have radio contact between the vehicles?

A. Yes, sir.

Q. When the two got out, Reed and the employee Lewis got out, who was left in the taxicab then?

A. Arthur Roy Shepherd.

Q. And the driver of the cab?

A. And the driver of the cab.

Q. Did you follow that cab to its destination?

A. Yes, sir.

Q. Where was that?

A. 1337 Vermont—excuse me—1337 Columbia Road, Northwest.

Q. And who, according to your information, lived at those premises?

A. William Miller.

Q. The defendant here before the Court?

A. Yes, sir.

Q. And one known to you as Bessie?

A. Yes, sir.

Q. Now, what, if anything, did you see this juvenile Shepherd do when the cab arrived at Columbia Road?

A. Shepherd got out of the cab and went into the basement entrance of 1337 Columbia Road.

Q. What did you do, if anything?

A. I waited about a minute, and then I walked down into the basement and looked around the corner. I didn't see anyone in the hallway.

Q. There is a hallway there?

A. Yes, sir.

Q. How many door entrances are there that lead off that hallway?

A. Two.

Q. Do you know what rooms they lead into?

A. Yes, sir.

Q. And what rooms are those?

A. To apartment No. 1 and to the furnace room.

Q. And there was no one in the hallway?

A. No, sir.

Q. What did you do after making that observation?

A. I came back out of 1337 Columbia Road and crossed to the other side of the street.

Q. And while at that position did you observe anything?

A. Yes, sir, I saw a light being turned on in the front furnace room.

Q. Had that light been on when you went down in the basement to make your first observaion of the hallway in the basement?

[fol. 25] A. No, sir.

Q. When that light came on, about how long did it stay on?

A. Just a short time.

Q. And then what, if anything, happened?

A. A few minutes later Roy Shepherd came out of the house and got back into the taxicab.

Q. What happened to the light in this furnace room?

A. It was turned out.

Q. When Roy Shepherd got back into the taxicab, was this the same cab he had gone there in?

A. Yes, sir.

Q. What, if anything, did you see or do then?

A. We followed the taxicab to 13th and Fairmount Streets, Northwest. At that time Officer Wurms stopped the taxicab. The driver of the cab opened the door, and the dome light of the cab flashed on. I observed shepherd leaning forward in his seat and placing something under the front seat of the taxicab.

As Officer Wurms got out of the car that he was riding in, and I got out of the car that I was riding in, I told him that the stuff was under the front seat of the cab. We immedi-

ately took Shepherd from the cab, looked under the front seat, and came up with a small coin manila envelope.

[fol. 26] Q. When you saw Shepherd in the cab on this last occasion, was he seated in the front seat or back seat?

A. In the front seat.

Q. What, if anything, did you find in that manila envelope?

A. A hundred capsules of suspected heroin.

Q. Did you perform a preliminary field test on that?

A. Yes, sir.

Q. What was the result?

A. It was a positive reaction that contained an opium alkaloid.

Q. Did you question Shepherd then?

A. Yes, sir.

Q. Previous to the time when Shepherd went into the premises of the defendant, had you received any information from your clerk Lewis with respect to this \$100 of advance funds that you had marked?

A. No, sir.

Q. Had you received a signal from him indicating whether or not the money had been delivered to Shepherd?

A. Yes, sir. If he was to go directly into the house at 1337 Vermont, that was the signal that he had given the money to Shepherd.

Q. And did he go directly into the house when he left the cab?

[fol. 27] A. Yes, sir.

Q. Did you then have a conversation with Shepherd after you found him in the cab with the narcotics?

A. Yes, sir.

Q. And what, if anything, did he state to you with respect to the premises 1337 Columbia Road?

A. When I asked him where he had just come from, and he said that he had come from 1337 Columbia Road, we asked him whom he had been there to see. He said he didn't go there to see anyone in particular, that Arthur Roy Shepherd and the agent had told him to go to 1337 Columbia Road and look behind a fire extinguisher in the hallway.

Q. You mean that Shepherd told himself to go there, or do you mean Reed and Lewis?

A. Reed and Lewis told him to go there and look behind the fire extinguisher in the hallway, and there he would find the hundred capsules of heroin in a package.

Q. Did you search Shepherd, or was he searched in your presence?

A. Yes, sir.

Q. Did you discover the \$100 of marked money?

A. No, sir.

Q. Then did there come a time following that—what time was this arrest of Shepherd, approximately?

A. About 3:45 a.m.

[fol. 28] Q. Following his arrest, did there come a time when you went to the premises 1337 Columbia Road?

A. Yes, sir.

Q. Will you tell us what happened when you went down into the premises there?

A. Officer Wurms knocked on the door and a voice from inside asked "Who is there?" Officer Wurms repeated the name "Blue," called Blue. Then he said in a very low voice, "Police."

The door was opened slightly, and it had a chain lock on it, and as the door was opened and the man looked around the door, he tried to close the door.

Q. Who was that man who looked around the door?

A. William Miller.

Q. Was he known to you?

A. Yes, sir.

Q. Is that the same William Miller that you had previously known in connection with a narcotics case?

A. Yes, sir.

Q. Did he say anything when he opened the door?

A. Yes, sir, he didn't want to let us in.

Q. What were his words?

A. I can't recall, but he wanted to know what we were doing there.

Q. What happened then?

[fol. 29] A. As we entered the room?

Q. What happened with respect to the door at that point?

A. We forced the door open and forced our way into the room.

Q. Was the door itself broken?

A. No, sir.

Q. What was broken, if anything?

A. I believe the chain latch on the door was broken.

Q. All right, sir. Upon entering the room what, if anything, did you see or do?

A. We seated William Miller in a chair next to the dresser, and Officer Wurns walked over to the woman that was sitting in the corner, and he said, "Hello, Bessie, how are you?" He looked down and he said, "What do you have in your pocket?"

She pulled out a roll of bills, and she said, "Just money." He took the money from her and gave it to me.

Q. What, if anything, did you do with that money?

A. We immediately began checking the serial numbers of the money, and we recovered \$34 of the marked money that had been given to Roy Shepherd.

Q. Was Roy Shepherd with you when you went into the premises of the defendant?

A. He wasn't with us at that time, but he was brought [fol. 30] in a few minutes later.

Q. When you went in, was he outside the hallway?

Mr. Williams: I object.

By Mr. Stevas:

Q. Where was he when you went in?

A. On the street, sir.

Q. Now, there came a time when he was brought into the premises?

A. Yes, sir.

Q. Was he handcuffed to the defendant Miller?

A. Yes, sir.

Q. Now, after finding—how much marked money did you find on Bessie?

A. \$34.

Q. After finding that money what, if anything, did you do?

A. There was two other packages of money recovered, two other bundles of money recovered, and we continued checking the serial numbers for some time. It was a total of—

The Court: Where were they recovered?

The Witness: One was recovered from a hat box, and

another roll of money was between a sheet and a mattress.

The Court: In other words, you made a search of the premises?

The Witness: Yes, sir.

[fol. 31] By Mr. Stevas:

Q. Now, what was the total amount of money that you uncovered in the premises?

A. I believe it was \$771.

Q. Of that money, how much of it was marked money?

A. \$100.

Q. Had you previously recorded the serial numbers of that money; or had they been recorded in your presence?

A. Yes, sir.

Q. Did you read off the serial numbers to the defendants at that time?

A. Yes, sir.

Q. Did the serial numbers on the bills recovered, the \$100 in bills recovered match the serial numbers that you had previously recorded?

A. Yes, sir.

Q. Did you have any conversation with either of the two defendants with respect to the \$100 of marked money?

A. They didn't want to talk about it. They refused to admit to money—

The Court: What did you say to them? What did they say to you?

The Witness: I told them we were checking the marked money against the money we had sent in there with Roy Shepherd, and they denied that Roy Shepherd had been in [fol. 32] there, or that money could have possibly been marked and brought into their premises.

Q. Did you hear any conversation between Roy Shepherd and either one of the two defendants?

A. No, sir, I didn't, but Officer Wurms did.

Mr. Stevas: All right, sir.

The Court: Of course, I can only consider what happened before the search took place.

Mr. Stevas: That is correct, Your Honor.

The Court: When did you arrest these two defendants?

The Witness: Immediately upon entering the place.

The Court: That is the important thing.

Mr. Stevas: I will do that, Your Honor.

The Court: Yes.

By Mr. Stevas:

Q. What time was it when you entered these premises?

A. About 3:55 a. m.

By the Court:

Q. When you entered, what did you say?

A. We told Blue that he was under arrest.

Q. Put your words in quotation marks, so to speak. What did you say to them?

By Mr. Stevas:

Q. You didn't say to them they were under arrest? You [fol. 33] used probably the second person, didn't you?

A. I believe I arrested him by his alias Blue.

By the Court:

Q. What did you say to him?

A. I told him that he was under arrest.

The Court: We don't want any indirect discourse. I want a quotation of what he said.

By Mr. Stevas:

Q. Will you give us the words that you yourself used, not a description of them, but the exact words that you can recall that you used at that time?

The Court: As near as you can remember.

A. I can't recall the exact words that I used.

The Court: As near as you can remember.

The Witness: As near as I remember, I said, "Well, look who's here, Blue." I told him to sit down and said they were under arrest and we were looking for our marked money.

By the Court:

Q. Was the woman placed under arrest?

A. Officer Wurns immediately walked over to her.

Q. What did he say to her?

A. I don't know, sir. I was occupied with—

The Court: Very well. You can get that from Wurns.

I think it is always important to fix the moment of arrest. While the *Sher* case in the Supreme Court holds that it [fol. 34] is not necessarily fatal to the search if the search takes place first and the arrest afterwards, if the two are one continuous transaction, nevertheless it is always helpful to fix the precise continuity of events.

By Mr. Stevas:

Q. Did you make any search of the apartment itself before you placed the defendant under arrest?

A. No, sir.

Q. Was any search of the apartment made before the time that Officer Wurns uncovered the money, marked money in the woman-defendant's pocket?

A. No, sir.

Mr. Stevas: I believe I have no further questions of this witness.

The Court: I will interrupt a moment for another matter.

(At this point the Court proceeded to other court matters, at the conclusion of which the following occurred:)

The Court: Any cross-examination, Mr. Williams?

Cross-examination.

By Mr. Williams:

Q. Officer Wilson, it is a fact that you did have no occasion to see either of these defendants on the night of March 25th, that is the night you arrested them, until you had entered their apartment, is it not?

[fol. 35] A. That's true, sir.

Q. And you had no prior contact with them until you entered their apartment, did you?

A. Do you mean at any time?

Q. With these defendants.

A. I had prior contact with William Miller.

Q. On the night of March 25th?

A. No, sir, not on that night.

Q. I think you testified, Officer, that you did first receive the information where he lived on the night of March 25th at about 1:35 a. m., did you not?

A. Yes, sir.

Q. That was when you made arrangements with Reed to contact one Shepherd, did you not?

A. Yes, sir.

Q. Prior to the time when you searched these premises, you were not certain as to whether or not Shepherd had contacted either of these defendants, were you?

A. No, sir.

Q. It is a fact, Officer, that the premises were entered prior to the time when Shepherd was actually apprehended in the taxicab, at which time the 100 capsules of narcotics were found, isn't it?

A. Yes, sir. I followed Shepherd to the basement.

Q. That was on this first occasion when he entered into [fol. 36] this apartment building, was it not?

A. Yes, sir.

Q. And subsequently you followed Shepherd up to 13th Street to Fairmount Street where he was stopped in a taxicab, is that true?

A. Yes, sir.

Q. During the period when Shepherd was stopped in the taxicab and the time when he was brought back to 1337 Columbia Road, were the premises at 1337 Columbia Road entered by some other officers?

A. No, sir.

Q. What officers were along with you?

A. Wurms, Pappas, and two investigators from the Virginia State Police named Beaumont and Thompson.

Q. Do you know how officer Wurms effected an entrance into premises 1337 R Street?

The Court: R?

By Mr. Williams:

Q. 1337 Columbia Road.

Mr. Stevas: With respect to Apartment 1?

Mr. Williams: With respect to the entire premises.

The Court: Well, of course, you objected to hearsay as to what Wurms said. I sustained your objection. You are now opening the door to hearsay testimony. You may pursue this line of inquiry if you wish, and then of course [fol. 37] the Government may do so likewise.

Mr. Williams: Very well, Your Honor. I thought he asked him if he knew how he entered.

The Court: You are opening the door to hearsay.

Mr. Williams: I will withdraw that question.

The Court: I will let you pursue it if you wish.

Mr. Williams: I will withdraw it, Your Honor.

By Mr. Williams:

Q. Officer Wilson, at the time when you first entered the premises there in the basement, isn't it a fact that effort was made to enter the furnished room because you thought somebody lived in there?

A. No, sir.

Q. Did either of the officers in your presence attempt to enter any other part of the premises down there in the basement?

A. Yes, sir, after we had entered Apartment 1.

Q. You didn't have any warrant for the arrest of either of these defendants?

The Court: This is admitted. There was no warrant here. So don't waste any time on that.

Mr. Williams: Very well, Your Honor. I have no further questions.

Mr. Stevas: Just one question.

[fol. 38] Redirect examination.

By Mr. Stevas:

Q. Before you made the search of the premises of the defendants, was the male defendant handcuffed to Shepherd?

A. Yes, sir.

Mr. Stevas: No further questions.

The Court: The male defendant is Miller?

Mr. Stevas: Miller was handcuffed to Shepherd in the apartment.

The Court: You handcuffed them?

The Witness: Yes, sir.

The Court: We will finish this afternoon, after the luncheon recess.

I don't suppose you have anything much more.

Mr. Stevas: No, sir, very little.

The Court: You are going to call Officer Wurnis?

Mr. Stevas: He is our only other witness. I will call him with respect to the female only.

(The witness left the stand.)

(Thereupon at 12:30 o'clock p. m. the trial was recessed until 1:45 o'clock p. m.)

[fol. 39].

AFTERNOON SESSION

(The Court proceeded to other court business at 1:45 o'clock p. m., at the conclusion of which the following occurred:)

The Deputy Clerk: The case of the United States v. William Miller, et al.

Mr. Stevas: Ready for the Government.

Mr. Williams: The defendant is ready, Your Honor.

The Court: You may proceed, Mr. Stevas.

Mr. Stevas: Yes, Your Honor.

I have Officer Wurnis coming.

Mr. Williams: If Your Honor please, with regard to Officer Wilson, could I ask him some further questions after I finish with this witness?

The Court: No, you may ask him further questions now, but not afterward.

Mr. Williams: Could I ask him now?

The Court: You may withdraw this witness and recall Officer Wilson.

Thereupon,

ED EARL WILSON, was recalled as a witness and, having previously duly sworn, was examined and testified further as follows:

Recross-examination.

By Mr. Williams:

[fol. 40] Q. Officer, I believe you testified that your informant was Clifford Reed.

The Court: Of course, you closed your cross-examination. My understanding is that you just wanted to ask one or two questions.

Mr. Williams: Yes, Your Honor.

The Court: Very well.

The Witness: Yes, sir.

By Mr. Williams:

Q. Now, it is a fact, Officer, that you knew at the time that Clifford Reed was already under indictment or on probation for violation of the narcotics laws, did you not?

A. No, sir.

Q. You didn't know that?

Mr. Stevas: I object to that.

The Court: Objection sustained. I don't see any relevancy in that.

By Mr. Williams:

Q. Could you tell us how long you had known Clifford Reed prior to March 25, 1955?

A. To the best of my recollection it was in October of '54.

Q. Was he at that time a defendant in a criminal action involving violation of the of the narcotics laws?

A. No, sir.

[fol. 41] Q. Have you known at any time since you first met him that he was a defendant in a criminal action involving a violation of narcotics laws?

A. No, sir.

The Court: I don't see the relevancy of that. What are you trying to show?

Mr. Williams: If Your Honor please, Officer Wilson testified that he had some information from a reliable informant. I submit that the background of his informant and the source of his information would go to reliability of that information.

The Court: Of course, this type of information would naturally come from unsavory characters. You couldn't get from a college graduate living in a wealthy neighborhood, that type of information. It has got to come from unsavory characters.

Very well, you may proceed.

Mr. Williams: Thank you, Your Honor.

The Court: There is no doubt of the fact that all of these people were disreputable people.

Mr. Stevas: The Government will stipulate to that.

The Court: Why, of course. The Government has to get its witnesses where it finds them. It can't subject them to a character examination. We would convict very few criminals if only high-class people were qualified as witnesses.

By Mr. Williams:

Q. Officer, it is a fact that in the arrangement, or the information which you got from Clifford Reed, he told you that he could arrange a transaction with Arthur Roy, did he not?

A. Yes, sir.

Q. And he didn't tell you that he was responsible for any subsequent arrangements or any conduct on the part of Arthur Roy subsequent to his contract with him, did he?

A. No, sir.

Mr. Williams: I have no further questions.

Mr. Stevas: No questions.

The Court: You may step down.

(The witness left the stand.)

Mr. Stevas: Officer Wurms.

Thereupon,

IVAN WURMS, was called as a witness by the United States and, being first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. For the record, will you give us your full name?

A. Ivan Wurms.

Q. W-u-r-m-s?

[fol. 43] A. Yes, sir.

Q. Where are you assigned, Officer Wurms?

A. Metropolitan Police Department, detailed to the United States Attorney's office.

Q. In connection with your duties you have occasion to assist narcotics squad agents, in connection with narcotic agents?

A. Yes, sir.

Q. Directing your attention to the date March 25, 1955, during the early morning hours of that date, were you present at a conversation between one Clifford Reed and Agent—

The Court: You needn't use this witness to corroborate the other witness. In other words, that will be cumulative.

Mr. Stevas: That is correct, Your Honor.

The Court: I suggest you limit this witness' testimony to anything that was not in the other witness' testimony.

Mr. Stevas: Very well.

By Mr. Stevas:

Q. Directing your attention, Officer Wurms, specifically to premises 1337 Columbia Road, Northwest, in the District of Columbia, did there come a time during the early morning hours of March 25th when you were at those premises?

A. Yes, sir.

Q. Directing your attention to those premises, to Apartment 1 of those premises, do you recall a time being outside the door to that apartment?

A. Yes, sir.

Q. Will you tell us what happened at that time?

A. At that time I knocked on the door and a voice inside asked who was there. And I said, "Blue. Police."

And he said, "who?"

I said, "Blue. Police."

He opened the door slightly. It was on a chain. He took one look at me and tried to slam the door, at which time I grabbed the door and opened it.

Q. Did you know this person, Blue, who opened the door?

A. Yes, sir.

Q. How did you know him?

A. Previous knowledge, and I have seen him before.

Q. Previous knowledge in connection with that—

A. Narcotics.

Q. Did you get into the room then, at that time?

A. Yes, sir.

Q. And who, if anyone else, was in the room?

A. Bessie Byrd.

Q. Did you know her before you entered the room?

[fol. 45] A. Yes, sir.

Q. How did you become acquainted with her?

A. The same way, through narcotics investigations.

Q. You knew her to be a narcotics violator on a previous occasion?

A. Yes, sir.

Q. Before going to 1337 Columbia Road, did you know who was occupying Apartment No. 1?

A. Yes, sir.

Q. When you went into the apartment, will you tell us specifically just what you did?

A. I went into the apartment. Bessie Byrd was sitting down in a chair toward the rear of the bedroom. I approached her and said, "Hi, Bessie, you are under arrest." I told her to stand up.

Q. Did she stand up?

A. Yes, sir.

Q. What, if anything, did you see or do at that time?

A. I noticed a bulge in her. She had a house coat on. There was a bulge in her pocket. I asked her what she had there. She stuck her hand in and she said, "Nothing but money."

Q. She stuck her hand in?

A. Into the pocket and took the money out.

Q. And took the money out?

[fol. 46] A. Yes, sir.

Q. What did you do then?

A. I took the money from her and handed it over to Agent Wilson.

Q. Were you present when Agent Wilson did something with that money?

A. I was present in the room when he was going over the serial numbers with Mr. Bowman.

Q. That money had previously been marked in your presence, had it?

A. Yes, sir.

Q. Following that, did you make a further search of the apartment?

A. Yes, sir.

Q. And you assisted Agent Wilson in that connection?

A. Yes, sir.

Mr. Stevas: I have no further questions, Your Honor.

Cross-examination.

By Mr. Williams:

Q. Officer Wurms, do you recall prior to March 25th ever having had a conversation with the defendant Miller?

A. No, never had a conversation with him.

Q. Well, I thought you testified you knew him.

A. I knew him.

Q. Well, would you tell us what the extent of your knowledge was, what you meant when you said you knew him?

The Court: I know lots of people I have never talked to. Everybody does.

The Witness: Do you want me to answer that question, Mr. Williams?

The Court: Yes, you must answer every question.

The Witness: I believe back in 1952 Mr. Miller and Bessie Byrd were arrested in a residence I believe in the 3500 block of 13th Street, Northwest, on a narcotics violation. At that time I was not present there, but I saw them when they were taken down to headquarters, and there were

certain pictures taken at that time, and I did see the pictures.

By Mr. Williams:

Q. Then I take it that your testimony that you knew them comes from the police record.

A. I knew them to see them, yes, sir. I have never spoken to them before that. I have seen them.

Q. Then you haven't had any prior conversations with the defendant Miller or Bessie Byrd personally?

A. No conversation, no.

Q. I think you testified, Officer, that you entered the premises there at 1337 Columbia Road along with Officer Wilson.

A. Yes, sir.

[fol. 48] Q. Were you at his side, in front of him, or behind him at the time that you first entered the premises?

A. I opened the door and I believe Agent Wilson went in ahead of me, after I opened the door.

Q. Now, it is a fact, Officer, that you entered the premises in the upstairs part of the apartment house and used the skeleton key to unlock the door leading to the basement?

A. Yes, sir.

Q. And Officer Wilson wasn't with you at that time, was he?

A. No, sir.

Q. When you came down in the stairway to the basement, where did you come to at that time?

A. The door adjacent to Apartment 1.

Q. You came into a furnace room?

A. Yes, sir.

Q. You had to get there before you could get to Apartment 1?

A. Yes, sir.

Q. Then what did you do?

A. I came out from the door that led from the furnace room to the hallway of apartment No. 1.

Q. About how much distance would you say is there between the furnace room door and the door leading to [fol. 49] Apartment 1?

A. Approximately three feet.

Q. They are separate doors, are they not?

A. They are separate doors.

Q. You found the door leading to the furnace room locked, didn't you?

A. I opened it. I don't know whether it was locked or not.

Q. Do you know if any attempt had been made to open it from the hallway?

A. No.

Q. You weren't with Officer Wurms when he attempted to open it from the hallway?

Mr. Stevas: For the record, this is Officer Wurms.

By Mr. Williams:

Q. I mean Officer Wilson.

A. When I came out from the furnace room to the hall, Officer Wilson wasn't there, at that time.

Q. Where was he?

A. He was coming from the basement, coming in.

Q. Do you know had he been in there prior to that time?

A. Had he been in there?

Q. Had he been in the hallway?

A. I don't know whether he went in the hallway.

[fol. 50] Q. Did you know if he attempted to open this door before?

A. No, I don't.

Q. Had you attempted to open it from the hallway?

A. Had I?

Q. Yes, sir.

A. No, sir. I came down from the upstairs.

Q. When you came down from upstairs and you unlocked the upstairs hallway door, didn't you thing that went into apartment No. 1? Is that why you went upstairs?

A. I went up that way to try to get into the basement because I didn't know whether the front door was jammed or not. I thought that was the best way to enter it.

Q. You were with Officer Wilson, were you not?

A. I went by myself that way.

The Court: I don't think it makes any difference how he tried to enter. The question is, and the only question, whether there was probable cause for them to enter the

apartment and place the two defendants under arrest. That is the question I have to decide.

Mr. Williams: Yes, Your Honor.

By Mr. Williams:

Q. Now, Officer Wurms, at the time you entered Apartment 1, the door was locked, wasn't it? There was a chain on the door, was there not?

[fol. 51] A. There was a chain on the door, yes, sir.

Q. And that chain was broken off, wasn't it?

A. Yes, sir.

Q. At the time that Arthur Roy was apprehended, I think it was at the corner of 13th and Fairmount Streets?

A. Yes, sir.

Q. Were you there?

A. Yes, sir.

Q. Did he tell you that he had been to Apartment 1 in these premises at 1337 Columbia Road?

A. He said he went to 1337 Columbia Road. We asked him who was there, and he said Blue, in the basement.

Q. Did he tell you—he told you the apartment number?

A. I don't recall whether he said the apartment number or not.

Q. When did it first come to your attention that the defendant Blue Miller lived in Apartment 1?

A. From the information received from Clifford Reed.

Q. That was prior to March 25th, wasn't it?

A. No, sir.

Q. When was that?

A. It was after the arrest of Clifford Reed, which was on March 25th.

Q. About 1:35?

[fol. 52] A. Yes, sir.

Q. Now, up until that time, Officer, did you have any reason to believe that the defendant Miller had done anything upon which you could justifiably secure a warrant for his arrest?

The Court: I am going to exclude that. There is no obligation to secure a warrant. I don't know how you are going to secure a warrant at two o'clock in the morning, anyway, because by the time you hunt up a magistrate and get an

affidavit and come back with the warrant, the bird might have flown away. The law is on a felony charge an arrest may be made without a warrant, provided reasonable cause is shown. That has been the law for centuries.

Very well, you may step down.

(The witness left the stand.)

Mr. Stevas: The Government has nothing further, Your Honor.

Mr. Williams: I have nothing further, Your Honor.

The Court: Will counsel care to be heard orally?

Mr. Williams: Yes, Your Honor.

The Court: I will hear you briefly.

Mr. Williams: If Your Honor please, in this case the evidence is clear.

The Court: I suggest you come forward if you wish to be heard.

[fol. 53]

ARGUMENT OF MR. WILLIAMS

Mr. Williams: Very well, Your Honor.

If Your Honor will please, I submit the facts fall certainly within the Wrightson case and the Cortee case with respect to probable cause to arrest these—

The Court: Certainly it doesn't fall within the Wrightson case. The majority of the Court of Appeals complained in the Wrightson case that there was no proof of probable cause. That was the burden of Judge Prettyman's opinion, that there was no proof of probable cause.

Here the Government has offered proof of probable cause. The only question is whether it is sufficient probable cause.

Mr. Williams: Very well, Your Honor.

And this, I think the testimony is clear that the officers moved on certain information coming from an informer who, I am certain that the record will show, did have a criminal record at the time. The officer testified that he first met the informer in October.

The Court: I know what the testimony is.

Mr. Williams: Very well, Your Honor.

Up until the time, if Your Honor will please, that the officers went into that apartment, there was no positive knowledge on the part of anybody, particularly these officers, that the defendant Miller or the defendant Byrd lived

there in the first place. They had not been seen prior to [fol. 54] this night. The only person with whom anybody had any knowledge of any deals with or any contact with was the informer, and the witness or the person referred to as Arthur Shepherd.

Now, certainly their activity was, as the officer said, very well covered. However, here the witness or the defendant Shepherd who is not before this Court, if Your Honor will please, enters an apartment building.

The Officer Wilson testifies that he peeked down the hallway and he didn't see him any more. He saw two doors, and didn't know where he had gone. He had disappeared from view. After the officer testifies that he crossed the street and he observed the front entranceway of this big apartment building, if you will please, and that the Shepherd boy came out of the building and reentered a taxicab, and he proceeded down 13th Street where he was apprehended at the corner of 13th and Fairmount Streets.

— Now, up until this time, if Your Honor will please, still these defendants are nowhere to be seen. So, I submit, how could it in fact be said at this point that the officers could have any probable cause that these defendants had done anything. They stopped the witness Shepherd and they bring him back down to 1337 Columbia Road, and they proceed to break into this apartment. When they find these defendants, they place them under arrest.

Now, up until this point, if Your Honor will please, there [fol. 55] has been nothing to indicate to these officers that a crime has been committed, and that these defendants have committed it.

They search the apartment, and they find subsequently marked money.

At this time the Fourth Amendment comes into play, and they were entitled to its protection.

I submit, if Your Honor will please, that the arrest was without probable cause as regards these defendants, and it was certainly in violation of their rights under the Constitution.

Mr. Stevas: If the Court please, the Constitution prohibits unreasonable searches. Had these officers come to Your Honor at this hour of the night or morning I am sure

Your Honor would have issued an arrest warrant for the defendants.

OVERRULING OF MOTION TO QUASH AND SUPPRESS

The Court: I wouldn't have gotten up to do that. I would have said, Go ahead and make an arrest without a warrant and don't bother me. You have no right to wake up Judges in the middle of the night.

The Court is of the opinion that there is ample proof of probable cause to make an arrest, and therefore the arrest was legal. The arrest being legal, the search was legal because it was incidental to the arrest.

The Court wishes to remind counsel of the words of Mr. [fol. 56] Justice Cardoza in the leading case of *Snyder v. Massachusetts*, in which that great jurist said, "Though justice is due to the accused, it is due to the accuser also. We must hold the balance true."

Motion denied.

(Thereupon at 2:30 o'clock p. m. the instant hearing was concluded.)

[fols. 57-58] Reporter's Certificate to foregoing transcript omitted in printing.

[fols. 59-60] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 61] [Filed Endorsement Omitted]

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

{Title omitted}

ORDER DENYING MOTION TO SUPPRESS—April 7, 1955

On this 7th Day of April, 1955, came the attorney of the United States; each defendant in proper person and by their attorney, J. Leon Williams; whereupon the motion of William Miller and Bessie Byrd to suppress evidence

coming on to be heard, after argument by counsel, is by the Court denied.

By direction of Alexander Holtzoff, Presiding Judge,
Criminal Court #4; Harry M. Hull, Clerk, By
Daniel J. Mencoboni, Deputy Clerk.

Present: United States Attorney; Victor Caputy, By
Alexander Stevas, Assistant United States Attorney;
Evelyn Sweeney, Official Reporter.

[fol. 62] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Holding a Criminal Term

Grand Jury Impanelled March 31, 1955, Sworn in on
April 5, 1955

Criminal No. 527-55

Grand Jury No. 407-55, 489-55

Via 18 U.S.C. 371, 26 U.S.C. 4704a, 21 U.S.C. 174.

The United States of America

v.

Bessie Byrd, William Miller, Arthur R. Shepherd

INDICTMENT—Filed June 1, 1955

~~The~~ Grand Jury charges:

On or about March 25, 1955, within the District of Columbia, and at a place or places unknown to the Grand Jurors, Bessie Byrd, William Miller and Arthur R. Shepherd, who are hereinafter referred to as the defendants, feloniously, wilfully and corruptly conspired and agreed together, and with other persons unknown to the Grand Jurors, to commit offenses against the United States,

that is, to commit offenses in violation of Title 26, Section 4704a, United States Code, and Title 21, Section 174, United States Code.

Overt Acts

At the times and places hereinafter mentioned, within the District of Columbia, the defendants committed, among others, the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

1. On or about March 25, 1955, defendant Arthur R. Shepherd received \$100.00 in marked currency from Arthur Lewis for purchase of narcotics.

2. On or about March 25, 1955, after receiving the money referred to in overt act one, defendant Arthur R. Shepherd proceeded by taxi to 1337 Columbia Road, Northwest, entered the basement at that address and remained there for a short time.

3. On or about March 25, 1955, defendant Arthur R. Shepherd left the basement at 1337 Columbia Road, North-[fol. 63] west, reentered a waiting taxi and drove to vicinity of 13th and Fairmont Streets, Northwest, where the cab was stopped by police.

4. On or about March 25, 1955, while the taxi in which he was riding was being stopped by police, defendant Arthur R. Shepherd hid, under a seat in the taxi, a package containing 100 capsules of heroin.

5. On or about March 25, 1955, defendant William Miller had possession of \$66.00 of the marked currency referred to in overt act one.

6. On or about March 25, 1955, defendant Bessie Byrd had possession of \$34.00 of the marked currency referred to in overt act one.

7. On or about March 25, 1955, defendants William Miller and Bessie Byrd had possession of 381 capsules of heroin.

Second Count:

On or about March 25, 1955, within the District of Columbia, Bessie Byrd and William Miller purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, 100 capsules containing a mixture

totaling about 100.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar.

Third Count:

On or about March 25, 1955, within the District of Columbia, Bessie Byrd and William Miller facilitated the concealment and sale of a narcotic drug, that is, 100 capsules containing a mixture totaling about 100.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the heroin hydrochloride had been imported, with the knowledge of Bessie Byrd and William Miller, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the second count of this indictment.

Fourth Count:

On or about March 25, 1955, within the District of Columbia, Arthur R. Shepherd purchased, sold, dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, 100 capsules containing a mixture totaling about 100.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar. This is the same heroin hydrochloride mentioned in the second and third counts of this indictment.

Fifth Count:

On or about March 25, 1955, within the District of Columbia, Arthur R. Shepherd facilitated the concealment and sale of a narcotic drug, that is, 100 capsules containing a mixture totaling about 100.7 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the heroin hydrochloride had been imported, with the knowledge of Arthur R. Shepherd, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the second, third and fourth counts of this indictment.

Sixth Count:

On or about March 25, 1955, within the District of Columbia, Bessie Byrd and William Miller purchased, sold,

dispensed and distributed, not in the original stamped package and not from the original stamped package, a narcotic drug, that is, 381 capsules containing a mixture totaling about 392.8 grains of heroin hydrochloride, quinine hydrochloride and milk sugar.

Seventh Count:

On or about March 25, 1955, within the District of Columbia, Bessie Byrd and William Miller facilitated the concealment and sale of a narcotic drug, that is, 381 capsules containing a mixture totaling about 392.8 grains of heroin hydrochloride, quinine hydrochloride and milk sugar, after the heroin hydrochloride had been imported, with the knowledge of Bessie Byrd and William Miller, into the United States contrary to law. This is the same heroin hydrochloride which is mentioned in the sixth count of this indictment.

Leo A. Rover, Attorney of the United States in and for the District of Columbia.

A True Bill: Harry Gandy, Jr., Foreman.

[fols. 66-69] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Criminal No. 527-55

Charge: VIO. 18 USC 371; Vio. 26 USC 4704a; VIO. 21 USC 174

UNITED STATES

VS.

#2. WILLIAM MILLER, Defendant

PLEA OF DEFENDANT—Filed June 3, 1955

On this 3rd day of June, 1955, the defendant William Miller, appearing in proper person and by his attorney

J. Leon Williams, Esquire, being arraigned in open Court upon the indictment, the substance of the charge being stated to him, pleads Not Guilty thereto.

By direction of Alexander Holtzoff, Presiding Judge
Criminal Court #4. Harry M. Hull, Clerk, by
Daniel G. Mancoboni, Deputy Clerk. RAK.

Present: United States Attorney, by Joel D. Blackwell,
Assistant United States Attorney; E. Sweeney, Official
Reporter.

[fol. 70] IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA, CRIMINAL DIVISION

Criminal No. 527-55

UNITED STATES OF AMERICA

v.

BESSIE BYRD, WILLIAM MILLER, and ARTHUR R. SHEPHERD,
Defendants

Transcript of Proceedings

Washington, D. C.,
Tuesday, June 21, 1955.

The trial in the above-entitled cause came on before
Honorable Luther W. Youngdahl, United States District
Judge, and a jury, at 2:30 o'clock p. m.

APPEARANCES:

Alexander Stevas, Assistant United States Attorney, for
the Government.

J. Leon Williams, and William Beasley Harris, for the
defendants.

[fol. 71]

PROCEEDINGS

The Clerk: The case of United States versus Bessie
Byrd, William Miller, and Arthur R. Shepherd.

Mr. Stevas: Ready for the Government, Your Honor.

Mr. Harris: The defense is ready.

(Thereupon the jury was sworn on voir dire.)

The Court: You may identify.

Mr. Stevas: May it please the Court, and you ladies and gentlemen of the jury panel:

My name is Mr. Alexander Stevas, and I am one of the Assistant United States Attorneys assigned to this Court.

The case which is about to be presented to you is entitled:

"The case of United States of American versus Bessie Byrd"—

(Bessie Byrd arose.)

"William Miller"—

(William Miller arose.)

"and Arthur R. Shepherd."

(Arthur R. Shepherd arose.)

These defendants, ladies and gentlemen are represented by their attorneys, Mr. J. Leon Williams and Mr. Harris, both members of the bar of this Court.

(The attorneys arose.)

In this case, ladies and gentlemen, the defendants are [fol. 72] charged by way of a Grand Jury indictment, in seven counts, charged with conspiracy to violate the narcotic laws of the United States, and they are also charged with violation of the narcotic laws of the United States.

This offense, ladies and gentlemen, is alleged to have occurred in the District of Columbia on or about March 25, 1955--this year.

In support of the indictment, the Government will call as its witnesses, or may call as its witnesses:

Mr. Arthur Lewis of the Federal Bureau of Narcotics—

(Mr. Lewis stood.)

Agent Fred Wilson, Federal Bureau of Narcotics—

(Mr. Wilson stood.)

Officer Ivan Wurms, Metropolitan Police Department
Narcotics Agent—

(Officer Wurms stood.)

Frank Pappas, Federal Bureau of Narcotics—

(Mr. Pappas stood.)

Dr. James Young, who is in the building, but not present at this time, who will be called as a witness.

Also Government witnesses who are not present but are on phone call subject to being called, is

F. B. I. Agent James C. Cadigan.

Another witness on phone call subject to being — is
[fol. 73] Mr. Carl Huban, of 325 11th Street, Northeast.

Now, do any of you ladies and gentlemen know any of the defendants in this case, Bessie Byrd, William Miller, or Arthur Shepherd?

Q. Do any of you know any of the witnesses' names that I announced to you?

Do any of you ladies and gentlemen know an individual by the name of Clifford Reed, of 1330 Vermont Avenue, Northwest?

Do any of you ladies and gentlemen know anything about this case which, as I say, occurred on or about March 25, 1955, in the District of Columbia, taking place in various parts of the city including the vicinity of 7th and M Streets, Northwest, 1331 Vermont—1330 Vermont Avenue, Northwest, and 1337 Columbia Road, Northwest?

Do any of you ladies and gentlemen know of any reason why any one of you should not serve as a juror in this case?

I presume from your silence, ladies and gentlemen, that each and every one of my questions has been answered by you in the negative.

Mr. Harris: May it please the Court:

May we propound just a few questions to the jury?

The Court: Yes, go ahead.

[fol. 74] Mr. Harris: I ask you ladies and gentlemen of the prospective jury panel as to whether any of you are so affected by the term "narcotic" that you feel you could not render a fair and just verdict from the evidence introduced?

I take it by your silence that your answer is in the negative.

Is there anyone among you who has a relative or close friend who has been addicted to use of narcotics?

I take it by your silence that your answer there also is in the negative.

Has any of you a close relative or friend employed as an enforcement officer of any enforcement agency, the F. B. I. or Metropolitan Police?

I take it by your silence that your answer is in the negative.

Is any one of you a member of any anti-narcotic league or association, or association of that nature?

Anti-Alcoholic?

I take it by your silence that your answer is in the negative.

Would any of you give more credence to the testimony of a law-enforcement officer because he is a law-enforcement officer than you would to the testimony of any other individual?

I take it by your silence your answer is in the negative. [fol. 75]

I have no further questions.

The Clerk: As your names are called, please answer and take your places in the jury box:

- Anne I. Armstrong, 1.
- Edward M. Baker, 2.
- John N. Binsted, 3.
- Rocco F. Clements, 4.
- John Fetsko, 5.
- Ruby Harner, 6.
- Wilbur Hickman, 7.
- Freda Julius, 8.
- Joseph F. McDermott, 9.
- Harriet Ray, 10.
- Herman Shufeld, 11.
- Elmer Tapscott, 12.

Mr. Steva: The Government is content with the jury, Your Honor.

Mr. Williams: Would Your Honor indulge us a moment?

The Court: Certainly.

Mr. Williams: No. 10.

The Clerk: Harriet Ray, you are excused from serving on the panel.

(Harriet Ray left the jury box.)

[fol. 76] The Clerk: Sophia Zalkind, take seat No. 10, please.

(Sophia Zalkind entered the jury box.)

Mr. Stevas: The Government is content with the jury.

Mr. Harris: No. 6.

The Clerk: Ruby Harner, you are excused from serving on this panel.

(Ruby Harner left the jury box.)

The Clerk: Clifton Anderson, take seat No. 6, please.

(Clifton Anderson entered the jury box.)

Mr. Stevas: The Government strikes juror No. 6.

The Clerk: Clifton Anderson, you are excused from serving on this panel.

(Clifton Anderson left the jury box.)

The Clerk: Joseph Arthur, take seat No. 6, please, on this panel.

(Joseph Arthur entered the jury box.)

Mr. Harris: No. 6.

The Clerk: Joseph Arthur, you are excused from serving on this panel.

(Joseph Arthur left the jury box.)

The Clerk: Joseph Ball, take seat No. 6, please.

(Joseph Ball entered the jury box.)

Mr. Stevas: The Government is content with the jury.

Mr. Williams: No. 8.

[fol. 77] Mr. Williams: No. 8.

The Clerk: Freda Julius, you are excused from serving on this panel.

(Freda Julius left the jury box.)

The Clerk: David Bishins, take seat No. 8, please.

(David Bishins entered the jury box.)

Mr. Stevas: The Government is content with the jury.

Mr. Harris: No. 7.

The Clerk: Wilbur R. Hickman, you are excused from serving on this panel.

(Wilbur R. Hickman left the jury box.)

The Clerk: Maude Curry, take seat No. 7, please.

(Maude Curry entered the jury box.)

Mr. Stevas: The Government is content with the jury.

Mr. Harris: No. 7.

The Clerk: Maude Curry, you are excused from serving on this panel.

(Maude Curry left the jury box.)

The Clerk: Mary Gurley, take seat No. 7, please.

(Mary Gurley entered the jury box.)

Mr. Stevas: The Government is content.

Mr. Harris: No. 7.

The Clerk: Mary Gurley, you are excused from serving on this panel.

[fol. 78] (Mary Gurley left the jury box.)

The Clerk: Henrietta Harvin, take seat No. 7, please.

(Henrietta entered the jury box.)

Mr. Stevas: The Government is content.

Mr. Harris: No. 11.

The Clerk: Herman Shufeldt, you are excused from serving on this panel.

(Herman Shufeldt left the jury box.)

The Clerk: Harry Himelfarb, take seat No. 11, please.

(Harry Himelfarb entered the jury box.)

Mr. Stevas: The Government is content.

Mr. Williams: The defense is content.

(Thereupon the jury as now empanelled was sworn.)

The Clerk: Leonard Lohr, take alternate seat No. 1, please.

Ernest Norwood, take alternate seat No. 2, please.

(Leonard Lohr and Ernest Norwood entered the jury box.)

Mr. Stevas: The Government is content with the alternates.

The Clerk: Ernest Norwood, you are excused from serving on this panel.

(Ernest Norwood left the jury box.)

The Clerk: Preston Russ, take alternate seat No. 2, [fol. 79] please.

(Preston Russ entered the jury box.)

Mr. Stevas: The Government is content with the alternates.

Mr. Harris: Content.

(The alternate jurors were sworn.)

The Clerk: All witnesses in the case of United States versus Beasie Byrd, et al, please retire to the witness room until called; all witnesses on both sides.

All jurors are excused until tomorrow morning at 9:45 to report back to this courtroom.

The Court: Ladies and gentlemen of the jury, now that you have been selected to serve as jurors in this case, I would like to give you the customary instructions:

That you should not discuss this case with any person whomsoever during the progress of the trial until you come to the jury room for your final deliberation.

You may proceed.

OPENING STATEMENT ON BEHALF OF THE UNITED STATES

By Alexander Stevas, Esq.

Mr. Stevas: May it please the Court, and you ladies and gentlemen of the jury:

As I stated to you in identifying this case, the defendants appear before you charged with a seven-count indictment [fol. 80] charging them with violations of the narcotics laws of the United States Code, and conspiracy to violate said laws.

In support of the indictment, ladies and gentlemen, and the counts in the indictment, the Government will offer certain evidence which at this time I should very briefly like to outline for you so that you will be able to better follow the testimony as it comes from the mouths of the witnesses, having an insight into what is to come.

In this case, ladies and gentlemen, the Government's evidence will tend to show through its testimony of its witnesses, the following is what occurred during this period in question, namely, March 25, 1955, on or about that day:

The Government's witness, Mr. Arthur Lewis, of the Federal Bureau of Narcotics, will testify that on the date in question there came a time when, following conversation with the other officers and a conversation with respect to an informer, that Mr. Lewis, together with the person Clifford Reed, proceeded to the vicinity of the 700 block of M Street, where Clifford Reed went into the premises occupied by the defendant Shepherd;

That there came a time shortly thereafter that Clifford Reed and the defendant Shepherd came out of the premises on M Street in the 600 block and got into the taxi-
[fol. 81] cab where the Government's man, Mr. Lewis, was waiting.

At this time, ladies and gentlemen, or during the whole course of these events, officer Wurms and Agents Pappas and Wilson, together with other observers, were in two separate motor vehicles;

That these vehicles were equipped, specially equipped with two-way radio, so that conversation could be had directly between the occupants of the two vehicles;

That during these early morning hours of March 25th, from the time that the defendant Shepherd came out of the premises at 617 M Street that he was under observation by one or the other of the cruisers; the cruisers or automobiles being in constant communication with each other by radio.

The evidence will show that the defendant Shepherd, together with the Government's man, Mr. Lewis, and Clifford Reed, were followed from 617 M Street, Northwest, to the 1300 block of Vermont Avenue, Northwest, which was the residence of Clifford Reed, at which time the Government's man, Mr. Lewis, and Clifford Reed, got out of the vehicle and went directly into the premises of Clifford Reed.

At this time the defendant Shepherd got into the front part of the automobile.

[fol. 82] Going back for just a minute, down at the vicinity of 617 M Street, Northwest, the Government's evidence will show that there was turned over to the defendant Shepherd at that time, by Mr. Lewis, of the Federal Bureau of Narcotics, \$100.00 in cash money of the United States, the serials numbers of which had been recorded by Agent Wilson. This money was turned over to the defendant Shepherd by Mr. Lewis, and that when they got to the 1300 block of Vermont Avenue Mr. Lewis and Mr. Reed got out of the car, went into the house, and the defendant Shepherd then moved up into the front seat, and there was a short conversation there, as there was at the time when the defendant Shepherd first got into the cab;

That the defendant then in the taxicab proceeded from Vermont Avenue by a circuitous route to the 1300 block of Columbia Road, Northwest.

During the entire trip from Vermont Avenue to Columbia Road he was again likewise followed by the two automobiles; sometimes by one car and sometimes by the other. Bearing in mind the unusual hour of traffic, it was very light, so that the cars would alternate and keep in touch with each other by radio;

That there came a time, ladies and gentlemen, that the taxicab in which the defendant Shepherd was riding came [fol. 83] to a stop in this block, the 1300 block of Columbia Road, Northwest, at which time the defendant Shepherd was observed by Agent Wilson of the Federal Bureau of Narcotics to get out of the taxicab and go into the basement entrance to a building located at 1337 Columbia Road, Northwest.

The Agent Wilson immediately alighted from his vehicle and went in the same direction;

That he went down the basement stairs;

That there was a light over the basement stairs so that he could see the defendant Shepherd going into these premises;

That Agent Wilson looked into the premises through the door to the entrance and all he could see was an empty hallway at that time;

That he then removed himself from the premises and

took up a position across the street behind a tree so that he could observe the entrance to these premises.

At this time the other agents were deployed about the vicinity.

That shortly after Agent Wilson took up his position across from the entrance to the apartment, there came a time when the light came on in the front basement room of this building into which he had seen Shepherd go; and that shortly thereafter this light went out and within a matter of a few minutes or so Shepherd was seen to come [fol. 84] out of the premises, get back into the taxicab which had been waiting all this time, and then proceed on his way.

That after proceeding on his way, the officers pursued—or continued to follow this taxicab—in which the defendant Shepherd now is riding in the front seat with the driver, and that within a matter of four or five blocks from this place, at 1337 Columbia Road, the taxicab was stopped by the officers. I believe Officer Wurms was driving the stopping vehicle, and it was forced over to the curb and at which time all the agents converged upon the automobile, the defendant Shepherd was seen to bend over where he was seated in the front seat;

That an immediate search of the place where the defendant was seated disclosed an envelope containing a hundred capsules;

That there was a field test, a preliminary field test performed right then and there at the scene by Agent Wilson which, by a positive color reaction, indicated the presence of a narcotic drug;

That the defendant Shepherd, of course, was placed under arrest, made certain statements to the police officers with respect to these hundred capsules, and that following this interrogation the whole group proceeded to the premises 1337 Columbia Road, this being somewhere around [fol. 85] three a. m., in the morning;

That upon arrival at these premises the officers went to the door, and that one of the officers knocked upon the door, calling out the name of Blue, which the evidence will show is the nickname or alias for the defendant William Miller;

That he called out the name "Blue," and announced that he was a policeman;

That the defendant Blue opened the door, at which time Officer-Agent Wilson was right there, together with Officer Wurms, and that Agent Wilson knew the defendant;

That the defendant had never closed the door;

That the officers then opened the door, went into the premises, and placed the defendant William Miller and Bessie Byrd under arrest;

That at that time Bessie Byrd had in her possession some money which she turned over to Officer Wurms;

That the serial numbers on the money in the possession of the defendant Bessie Byrd when checked against the serial numbers which had previously been reported; of the \$100.00 given to Mr. Lewis, who in turn gave it to the defendant Shepherd, and it was found that of the money on the person of Bessie Byrd, \$34.00 corresponded with the serial numbers on the bills that had been recorded;

[fol. 86] That a further search of the apartment disclosed the other \$66.00, making a total of \$100.00.

On the single bed that was in the room, somewhere underneath the sheets or under the mattress, I forget which, of that bed, other moneys were found;

That upon further searching the premises, ladies and gentlemen, the evidence will show that the officers uncovered 381 capsules which, by chemical analysis, were shown to contain narcotic drugs, or to be narcotic drugs;

That these capsules were recovered in the furnace room adjoining the apartment of the defendant, in the basement, there being only two rooms, the furnace room and the apartment of the defendant.

The evidence will show, ladies and gentlemen, that other matters were recovered in the search, consisting of similar envelopes to that in which narcotics were found when the defendant Shepherd was arrested, together with empty gelatin capsules;

That there were certain statements made by some or all of the defendants which the officers will testify to; and at the conclusion of all this evidence, ladies and gentlemen, which will be submitted in support of the indictment—and bear in mind this is just briefly the Government's case—I believe we will show you that by the very

[fol. 87] actions of these defendants, and the other acts which they committed in pursuance of the conspiracy count in the indictment, will show, I believe, beyond any reasonable doubt that the acts were committed in pursuance of this common purpose or scheme that they had to violate these laws, and that there was a mutual implied understanding among the defendants when these transactions occurred that they were going to violate the narcotic laws.

And likewise, ladies and gentlemen, the evidence will show, Count 1, as I say, is a conspiracy count; Counts 2 and 3 of the indictment, ladies and gentlemen, allege that the defendants Bessie Byrd and Miller, the two who were in the home, or the apartment, it is alleged that they, in Count 2, distributed not in or from the original stamped package these 100 capsules which were subsequently found in the possession of the defendant Shepherd.

And they not having the Government stamp required by law, at the time, and they containing sufficient grains of narcotic drugs.

The third count charges the defendant Byrd and Miller, the same two defendants, with a violation known as facilitating and concealing the narcotic capsules after they had been imported in to the United States contrary to law. The evidence will show that they had facilitated and con-[fol. 88] cealed these hundred capsules.

Counts 4 and 5, ladies and gentlemen, of the indictment, relate solely to the defendant Shepherd:

Dealing again with the same 100 capsules which I have just referred to, the Government's evidence will show that the defendant Shepherd purchased and had these 100 capsules on his person at the time of his arrest, within his immediate actual possession, and at that time they were not in the Government-stamped-tax package, and there was no stamp tax on the envelope in which they were found.

Count 5 charges the defendant Shepherd, ladies and gentlemen, with facilitating the concealment and sale of these hundred capsules:

And in the last two counts of the indictment, ladies and gentlemen, we are concerned only with the defendants Byrd and Miller and with respect to Counts 6 and 7 they are similar to Counts 2 and 3, the same charge as in 2 and 3, but dealing with the 381 capsules which were found in the

premises; being Count 6, they are charged with purchasing, selling, distributing not in or from the original stamped package these 381 capsules and in Count 7 they are charged with facilitating concealment of these 381 capsules containing 392 grains of heroin hydrochloride, quinine hydrochloride, milk sugar.

Now, ladies and gentlemen, if we show you this in [fol: 89] support of these seven counts, we shall ask you to find the defendants Bessie Byrd, William Miller and Arthur Shepherd guilty of those counts in these indictments wherein they respectively are charged.

Mr. Williams: If Your Honor please, might we reserve making our opening statement at this time?

The Court: Certainly.

Mr. Stevas: May I call Arthur Lewis?

Mr. Harris: May we approach the bench, Your Honor?

The Court: Yes, sir.

(Thereupon, counsel for the parties approached the bench, and conferred with the Court as follows:)

RENEWAL OF MOTION TO SUPPRESS AND DENIAL THEREOF.

Mr. Harris: Your Honor, the purpose of approaching the bench at this time is that we would like to renew our motion that was made heretofore in regards to the illegal search and seizure and evidence that was obtained. The motion was to suppress the evidence.

The Court: Was there a full hearing on that?

Mr. Stevas: There was a full hearing before Judge Holtzoff which consumed the greater part of one Friday Morning at which time Mr. Williams and I appeared. The motion was denied by Judge Holtzoff.

The Court: Briefly, what was the situation, Mr. Stevas, on that? What was the claim?

[fol. 90] Mr. Stevas: The motion only went to the marked money. There was no motion made to suppress the narcotics, because there was a disclaimer of the possession of the narcotics.

The Court: I see. Just as to the marked money.

Mr. Stevas: Yes.

Mr. Williams: Yes.

The Court: What was the position of the defendants on that, that there was no search warrant; is that it?

Mr. Harris: Yes.

Mr. Stevas: The Government conceded before Judge Holtzoff we had no search warrant and no arrest warrants.

We established that the officers had probable cause at the time to go into the premises at that hour in view of the evidence that they had.

The Court: I think in view of the fact that the matter was so fully gone into before, I will deny the motion.

Mr. Harris: Your Honor, I know Your Honor has ruled.

The Court: Yes.

Mr. Harris: But it was my understanding that there are [fol. 91] cases that a certain motion can be heard again at re-trial.

The Court: It can be, but where a half-day is taken, and having been gone into carefully, I would be disposed to say that—

Of course, though, it is conceivable that after the hearing I might not agree—

I think that after the matter is fully gone into I would—

Mr. Harris: Would Your Honor reserve the decision until such time—

The Court: I will give you the right to make another motion. You certainly have a right at the end of the testimony.

Mr. Stevas: The Government can't put that evidence before a jury.

The Court: No.

I am just giving the right on what evidence there is, if they think on the evidence that is disclosed in the case, that they still have a right to make the motion on the basis of that evidence.

— I am saying you can make the motion.

Mr. Harris: Very well, Your Honor.

The Court: But I just want to reiterate—

[fol. 92] Mr. Harris: We wanted to renew it, of course, Your Honor, in protection of the clients, and also because perhaps it will show a little more clearly how this apartment house was situated and you get the entire picture, that Your Honor may be disposed as Your Honor indicated, that the motion is proper at that time. We want to preserve our record.

The Court: Certainly.

(Thereupon counsel returned to their positions at the trial table.)

Thereupon,

ARTHUR LEWIS, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

• Direct examination.

By Mr. Stevas:

Q. For the record, will you give us your full name; and kindly spell your last name for the court reporter, please.

A. Certainly, sir. Arthur Lewis—L-E-W-I-S (spelling).

Q. Where are you employed, Mr. Lewis?

A. I am employed by the United States Treasury Department, Federal Bureau of Narcotics.

Q. And approximately how long have you been employed by the Federal Bureau of Narcotics?

A. Approximately one year and eight months.

Q. During the month of March of 1955, were you employed or working at that time with the Federal Bureau of Narcotics?

A. Yes, sir, I was.

Q. And were you at that time working in what would be termed an undercover capacity?

A. That is correct, sir.

Q. Now; during the course of your duties, Mr. Lewis did there come a time when you had occasion to meet one Clifford Reed?

A. That is correct, sir.

Q. And did you have discussions with Clifford Reed?

A. I did, sir.

Q. Now, did there come a time when you received a phone call on or about March 25, 1955?

A. That is correct, sir.

Q. And from whom was that phone call received?

A. Agent Fred Earle Wilson of the Federal Bureau of Narcotics.

Q. Now, pursuant to that phone call, did there come a time when you saw someone?

A. Yes, sir, that is right.

[fol. 94] Q. Who was that that you saw?

A. As a result of that telephone call I met Agent Fred Wilson, Officer Bowman of the Virginia State Police; and Clifford Reed, in the vicinity of 7th and T, Washington, D. C.

Q. Where did you go, if any place, from there?

A. With the aforementioned persons I went to 6th and New York Avenue where I met Agent Frank Pappas, of the Federal Bureau of Narcotics and Officer Thomas, I believe it was, of the Virginia State Police.

Q. Now, at that time, did you hear any discussion between these agents and the officers whom you have named?

A. Yes, sir, I did.

Q. Did you hear any discussion with respect to this person Clifford Reed?

A. That is correct, sir.

Q. And did you receive certain information at that time from Clifford Reed?

A. I did, sir.

Q. And about what time of day was this when you were at this vicinity of—you say 6th and New York Avenue?

A. That is correct, sir.

Q. About what time was that?

A. That was about 2:30 a. m. on the morning of March [fol. 95] 25, 1954.

Q. And that was in what section of the District of Columbia; do you know?

A. The Northwest section, I believe it was, sir.

Q. In the District of Columbia?

A. That's right.

Q. Now, without telling us what Clifford Reed said to you, can you tell us what the general character of the conversation dealt with?

Mr. Harris: That is objected to.

The Court: Well, I don't think we had better go into that.

Mr. Stevas: All right.

The Court: You will be getting into conversation, if you do.

By Mr. Stevas:

Q. As a result of this information you received at that time, what, if anything, happened?

A. Well, as the result of the conversation that the officers and I had with Clifford Reed, I was furnished with a hundred dollars, an official list of Government-advanced funds, by one Agent Fred Wilson.

Clifford Reed and I left the agents and the officers and proceeded on foot to 7th and M Northwest, Washington, D. C.

[fol. 96] The Court: 7th and M.

The Witness: Yes: 7th and M.

By Mr. Stevas:

Q. "M" as in money.

A. That is correct, sir.

Q. And when you left 6th and New York Avenue, these other officers and agents that you referred to were left there?

A. That is correct, sir.

Q. Now, where did you and Clifford Reed go to then, from 7th and M Streets, Northwest, if anywhere?

A. At 7th and M Northwest, as we hailed a taxi, or I hailed a taxi; Clifford Reed and I entered, and we proceeded to the immediate vicinity of 617 M Street, Washington, D. C., parking on the outside, I believe it was, facing east.

Q. And the distance that you traveled from the time that you hailed the cab at 7th and M Streets, Northwest, and traveled from there—was how far, to where?

A. To 617 M Street—it was a very short distance. It is within the same distance there.

Q. Can you give us the approximate time when this happened and you finally arrived there at 617 M Street?

A. The time then was approximately 3:05—about [fol. 97] 3:05 or 3:10 a. m.

Q. A. M.

A. That is correct, sir.

Q. On the 25th.

A. That is right; on March 25th.

Q. Now, what, if anything, did you do en route to this 617 M Street or after you got there?

A. Well, while en route to 617 M Street, I took \$50.00 of the official listed Government-advanced funds out of the \$100.00 I had in my possession, and gave it to Clifford Reed.

Q. And what was your purpose in giving that to Clifford Reed?

A. The purpose, sir, was an indication of our partnership when Clifford Reed was to go into 617 M Street.

Q. When you got to 617 M Street and parked the cab, what happened then?

A. At 617 M Street, Clifford Reed left the taxicab and walked into 617 M Street, walking across the street.

Q. 617 is located on which side of M Street?

A. I think it is on the north side, sir, if I am not mistaken.

Q. And you were on the south side.

A. We were on the south side, that is right.

[fol. 98] Q. And then what happened when he got there?

A. Well, when he got there he entered the building, stayed approximately five minutes, and returned to the cab with a man then unknown to me, but whom I now know to be Arthur Roy Shepherd, seated next to counsel there.

Q. Now, for the purpose of the record, can you point to which one is Arthur Shepherd?

A. That is Arthur Roy Shepherd seated at the end of the table.

Mr. Stevas: May the record show he points to the defendant Shepherd, if Your Honor please.

The Court: It may so indicate.

By Mr. Stevas:

Q. Did you see where Shepherd came from?

A. He came out of that building, 617.

Q. Who was with him at that time?

A. Clifford Reed.

Q. And what, if anything, did you see Clifford Reed and the defendant Shepherd do?

A. Clifford Reed and Shepherd crossed the street and entered the cab. Clifford Reed sat in the center and Shepherd sat on the outside.

Q. Where were you seated?

A. I was seated directly behind the driver; three of us [fol. 99] were seated in the rear.

Q. And what, if anything, happened after they seated themselves in this taxicab?

A. When Reed and Shepherd seated themselves in the taxicab, Reed handed to me the \$50.00 in the listed Government official-advance funds which I had previously furnished him, and I put in an additional \$50.00 of the \$100.00 and handed it to Arthur Roy Shepherd.

Q. Now, what was your purpose in going to this 617 M Street, Northwest?

Mr. Harris: I think that is repetitions.

Mr. Stevas: I asked him what his purpose was in giving Reed the \$50.00.

Now my question is, what was your purpose in going to 617 M Street?

The Witness: To purchase narcotics.

By Mr. Stevas:

Q. Now, when you gave Shepherd the \$100.00, the \$50.00 that you got from Reed, and the other \$50.00—

A. That is correct.

Q. —that was all advance funds of the Bureau?

A. That is right; Bureau of Narcotics, listed Government-advanced funds, sir.

Q. And did you have any conversation with the defend- [fol. 100] ant Shepherd or was there any conversation in his presence at that time?

A. Yes, sir.

Simultaneous to Shepherd's getting into the taxicab and by handing him the money, he requested that we accompany him to someone named "Blue's" house. He stated he had a girl waiting for him back at 617, and he was in a hurry to return, to return to 617.

The Court: Whose house was that, did you say?

The Witness: 617.

The Court: No, "Blue's?"

The Witness: Someone named "Blue's" house.

By Mr. Stevas:

Q. At that time, did you know who "Blue" was?

A. I had heard the name "Blue" before, mentioned as being one William Blue Miller.

Q. Now, what happened after that suggestion by the defendant Shepherd that you go with him?

A. We declined to go with Shepherd and we proceeded to 1330 Vermont.

Q. And whose premises are those, if you know?

A. Those premises at 1330 Vermont is the residence of Clifford Reed who was with me at the time.

[fol. 101] Q. Did you have any conversation with respect to that getting off at Clifford Reed's enroute from 617 M Street, up to Clifford Reed's home?

A. Not in between that period, sir, except that previous conversation.

Q. What happened when you got up to Clifford Reed's home?

Q. When we got to 1330 Vermont Avenue, Clifford Reed, Shepherd, and I got out of the cab and Shepherd went into the front seat. He then requested some extra money for the taxi fare. I asked him where he was going and he said he was going to the 1300 block or street of Columbia Road.

I then followed him with a dollar in change.

Shepherd—

Oh, after I furnished him with the change, Shepherd then said, "to make sure you are here when I come back" or something to that effect.

Q. Now, what happened to Shepherd then?

A. Shepherd remained in the front seat of the cab. Reed and I entered the premises 1330 Vermont and we observed the taxi containing Shepherd make a U turn in the street where he was lost from my observation.

Q. Where did you go, did you say?

A. 1330 Vermont.

[fol. 102] Q. How did you go into 1330 Vermont?

A. We walked up the stairs there on the outside leading into the vestibule; we walked up the stairs and entered into the vestibule of 1330 Vermont.

Q. With respect to your entrance into 1330 Vermont, had you had a previous conversation with respect to your en-

trance in that apartment with anyone, as to the manner in which you would enter?

A. Yes, sir. I had arranged with the covering agents to note that if I went into the building, that was a signal or a sign that I had furnished the listed advance funds to Shepherd.

Q. And did you walk straight into that building then?

A. That is correct, sir.

Q. Now, were there any other conversations in your presence or by the defendant that you can recall at this time with respect to what happened on this particular morning?

A. Not that I can recall, sir, except those that I have already stated.

Q. Did the defendant make any statement to you with respect to what he was going to Blue's house for?

A. Well, he made the statement, if I can remember correct, when he left, about our being there—about our being at 1330 Vermont when he came back with the stuff, or something to that effect, when he came back with the stuff.

Q. Now, what does the term "stuff" mean in the language of the narcotics trade?

A. Well, "stuff" is indicative of heroism or any opiate or marijuana, capsule—

Mr. Harris: Your Honor, I am sorry to interrupt, but the answer to the previous question, Your Honor, was not responsive.

Mr. Stevas, as I recall, asked him as to whether a statement was made as to what he was going to Blue's house for, and he has made no reply to that. He has gone off into something else, Your Honor, and I don't know that he is qualified—

The Court: Do you want to answer that question?

The Witness: I don't recall him saying exactly what he was going to Miller's house for.

Mr. Harris: With that answer, Your Honor, I make a motion that his previous answer, which was unresponsive to the question, be stricken.

The Court: Motion denied. I don't recall what the previous answer was. It is a little late now to be going [fol. 104] back.

Go ahead.

By Mr. Stevas:

Q. You didn't have occasion to see the defendant after that, then?

A. No, sir.

Q. That is, Shepherd?

A. No, sir, I did not.

The Court: We will interrupt here and adjourn until tomorrow morning.

(Thereupon, at 3:30 o'clock p. m., the Court adjourned until 10:00 o'clock a. m., tomorrow, Wednesday, June 22, 1955.)

[fol. 105]

[Title omitted]

Wednesday, June 22, 1955.

The trial in the above-entitled cause was resumed before Honorable Luther W. Youngdahl, United States District Judge, and a jury, at 10:00 o'clock a.m.

APPEARANCES:

Alexander Stevas, Assistant United States Attorney, for the Government.

J. Leon Williams, and William Beasley Harris, for the defendants.

[fol. 106]

PROCEEDINGS

The Clerk: Are there any preliminary matters?

Thereupon,

ARTHUR LEWIS, the witness at adjournment, resumed the stand, and was further examined and testified as follows:

Direct examination (Resumed).

By Mr. Stevas:

Q. Mr. Lewis, yesterday you stated you were an employee of the Treasury Department, Federal Bureau of Narcotics.

A. That is correct.

Q. In what capacity are you employed by the Federal Bureau?

A. As a Narcotic Enforcement Clerk awaiting my commission as a Narcotic Enforcement Agent.

Q. You at present, then, are training to become an Agent?

A. That is correct, sir.

Q. Of that Bureau.

A. That is correct, sir.

Mr. Stevas: No further questions of this witness, Your Honor.

[fol. 107] Cross-examination.

By Mr. Williams:

Q. Mr. Lewis, when did you begin your employment with the Narcotic Bureau?

A. November 23, 1953.

Q. And when did you come to Washington?

A. December 3, 1954.

Q. Now, had you worked in an undercover capacity before you came to Washington?

A. Yes, sir, I did.

Q. Did you perform clerical duties in connection with that capacity here in Washington?

A. No, sir, I did not.

Q. Now, you got a phone call from Agent Wilson, you testified to yesterday, on March 25th; in the evening or morning?

A. On the morning of the 25th.

Q. Could you tell us about what time it was?

A. Approximately 2 a.m.

Q. Now, at that time did Agent Wilson tell you where he was?

Mr. Stevas: Now, if Your Honor please, they objected yesterday to the conversations they had. If he is going into part of them I submit the whole of the conversation should come in.

[fol. 108] The Court: If you are going to into part of the conversation, the Government then in fairness should have the right on redirect to go into the other parts of the conversation, counsel.

Mr. Williams: If Your Honor please, I think my question only went to the fact as to the physical position of Agent Wilson, as to where he was when he telephoned.

The Court: Go ahead; you may answer.

But as to any other parts of the conversation, if you open it up, you understand—

Mr. Williams: Very well, Your Honor.

The Witness: He did not tell me where he was calling from at the time.

By Mr. Williams:

Q. Now, about what time was it, Officer, when you got to 6th and New York Avenue as a result of this telephone call you say you got?

A. I would say it was about 2:30 a.m.

Q. Did I misunderstand you a moment ago to say you got the telephone call at 2:30?

A. No, I believe I said 2 a.m., if I am not mistaken, Mr. Williams.

Q. Now, at the time when you arrived at 6th and New York Avenue, who was present there; whom did you meet? [fol. 109] A. I believe we met Agent Pappas, Officers Bowman and Thompson from the Virginia State Police, Clifford Reed, who had gone up with us—

Q. Beg your pardon?

A. Clifford Reed, who had gone up to 6th and New York Avenue with us and Agent Fred Wilson.

Q. Now are you saying that prior to going to 6th and New York Avenue, that Clifford Reed was in your company?

A. That is correct.

Q. Where did he first get in your company, Officer?

A. When I first met him in the vicinity of 7th and T.

Q. Now, was that by pre-arrangement?

A. Yes; that was pursuant to that telephone call.

Q. Well, when you met Clifford Reed, who else was with him?

A. Agent Fred Wilson and Officer Bowman, I believe it was, of the Virginia State Police.

Q. Now, about what time was that, Officer?

A. That was approximately 2:25, 2:30, as I said before—2:30 a.m.

Q. Do I misunderstand you, Officer, to say that you met

—are you saying that you met Agent Wilson and Agent Pappas and Clifford Reed at 7th and T at 2:30?

A. I am saying sir, that at about 2:30 I was with [fol. 110] Agent Fred Wilson, Officer Bowman of the Virginia State Police, and Clifford Reed, and we proceeded to 6th and New York Avenue. The time was then approximately 2:30 a.m.

Q. Let me direct this question to you, Officer:

Where did you first meet Agent Pappas, Agent Wilson, and Clifford Reed prior to going to 6th and New York Avenue Northwest?

A. At the vicinity of 7th and T, Northwest, Washington.

Q. At what time was that, Officer?

A. What time? It was then approximately 2:30 a.m.

Q. Could you tell us what time it was, Officer, when you, in company with these persons named by you, did subsequently go to 6th and New York Avenue?

A. Well, immediately thereafter; five or ten minutes later, we were at 6th and New York Avenue. That would be about 2:40 or—yes, about 2:40 a.m.

Q. Did you stay in the vicinity of 7th and T Streets for any length of time?

A. No, I wouldn't say that we did, sir.

Q. About how long would you say you stayed there after you met these officers and Clifford Reed?

A. I would say we proceeded immediately to 6th and New York Avenue.

[fol. 111] Q. How did you go down there, Officer?

A. Via a Government vehicle.

Q. All in one car?

A. That is correct.

Q. Now, did you meet anybody else at 6th and New York Avenue?

A. Yes; as I said, we met Agent Pappas and Officer Thompson, or Thomas, of the Virginia State Police.

Q. Where did you meet Officer Bowman?

A. He was in the vehicle when I met them at 7th and T.

Q. Now, is it a fact that at the time when you met the officers and Clifford Reed at 7th and T Streets, Northwest, that Clifford Reed was already in custody?

A. That is correct, sir.

Q. And it is a fact that he was in custody for having violated the narcotics laws earlier that night, was he not?

Mr. Stevas: If he knows of his own knowledge, Your Honor.

I will stipulate he was under arrest.

The Court: He should testify only as to what he knows. If he doesn't know, he can so state.

Mr. Williams: Thank you, Your Honor.

[fol. 112] The Court: The question is whether—

Do you recall the question?

The Witness: Yes, I recall the question—whether he was under arrest at the time.

Was that the question?

By Mr. Williams:

Q. That is correct.

A. Yes, I believe he was under arrest at the time, sir.

Q. Did you find out subsequently that his arrest was caused by a violation which occurred around 1:35 a. m., that morning?

A. I can't state—of my own knowledge—that I know he was arrested—

The Court: If you can't state it, you may so indicate.

Mr. Stevas: My stipulation still stands, that he was under arrest at the time for a narcotics violation—Clifford Reed.

By Mr. Williams:

Q. Is it not a fact, Officer, that Clifford Reed did accompany you down to 6th and New York Avenue and later to the 600 block of M Street, at your direction?

A. Yes, sir; under my direction and observation, yes.

Q. And it is further a fact, Officer, that you gave him [fol. 113] \$50.00 with which to purchase some—or attempt to purchase—some narcotics, did you not?

A. That is correct, sir.

Q. Now, where were you, Officer, when you gave him the first \$50.00?

A. I believe I was seated in a taxicab across from 617 M Street.

Q. Now, did that \$50.00 which you gave Clifford Reed at that time ever come back into your possession?

A. Yes, sir, it did.

Q. When?

A. When Clifford Reed got back into the vehicle after he had left and entered 617.

Q. He gave you the \$50.00 back?

A. That's correct.

Q. Did he give you any reason for having returned the money to you?

A. It had been prearranged between Clifford Reed and myself for him to return the money to me when he got back into the vehicle.

Q. I think yesterday, Officer, you testified about this money having been listed pre-advanced funds of the Narcotic Bureau.

A. That is correct, sir.

[fol. 114] Q. And when did you first see the list on which this money was listed?

A. When we were at 6th and New York Avenue the officers whom I previously mentioned, Clifford Reed and myself, I witnessed the listing of the advanced funds by Agent Fred Wilson.

Q. Now, what was it listed on?

A. I believe it was listed on a piece of paper at the time, sir.

Q. You believe? Don't you know, Officer? Were you there?

A. Yes, sir, I was there.

Q. Could you tell us, then?

A. I can't recall exactly but I know it was listed and I signed the list. It was either a piece of paper or a card. I can't recall exactly right now.

Q. Could you give us your best recollection, Officer?

The Court: He says he can't recall, counsel. I think that should be sufficient.

By Mr. Williams:

Q. Your testimony, then, is that you don't know whether it was on a piece of paper or a card or something, but you signed it.

A. That is correct, sir. I witnessed the listing of the ad-
[fol. 115] vance funds and I signed it.

Q. Now, what did you sign it for, Officer? What was
your signature purporting to be on that list?

A. Well, that was for future identification of that money
list.

Q. Of the list?

A. That is correct, sir, and the moneys.

Q. Did you check the money yourself, the numbers on
the money?

A. No, sir, I heard them as they were being called off.

Q. Who was doing the calling?

A. I don't recall at this time which officer was calling out
the numbers.

Q. Who had the list?

A. I believe it was Agent Fred Wilson.

Q. Now, do you recall, Officer, the denominations of this
particular money?

A. I believe I do, yes, sir.

Q. Could you tell us?

A. Well, I think there were twenty \$1.00 bills; we were
counting the one's; six \$5.00 bills—that is \$50.00; and I
believe it was five \$10.00 bills, if I am not mistaken at this
time.

Q. Now, Officer, who gave you this money?

[fol. 116] A. Agent Fred Wilson.

Q. And where were you at the time that it was given to
you?

A. I was at 6th and New York Avenue.

Q. Where were you, on the sidewalk, or in the automobile,
or where?

A. Standing on the sidewalk. It was early in the morn-
ing, and we were standing out on the sidewalk.

Q. I see.

And is that where the money was checked?

A. That is correct.

Q. Were you under a street light?

A. I believe we did go under a street light, sir, yes.

Q. Now, where was your car parked?

A. The car was parked right on the curb there in the
vicinity of 6th and New York Avenue. I am not too sure
at this time exactly where it was parked.

Q. How far were you from the automobile at the time that you were checking this money?

A. Well, to the best of my recollection I would say I was away from the automobile, sir. The exact distance I really can't recall at this time.

Q. Where was Clifford Reed at this time?

[fol. 117] A. Clifford Reed was in the immediate presence of all of us most of the time.

Q. He was there with you?

A. That's right, sir.

Q. Now, when you gave Clifford Reed the \$50.00, you say you were in the taxicab?

A. That's right.

Q. You counted it out?

A. That's correct.

Q. You know what the denomination of the money was which you gave Clifford Reed?

A. Yes, sir, I believe I gave him all of the \$10.00 bills.

Q. All of the \$10.00 bills.

A. That's right, sir.

Q. You separated them?

A. That's right, yes.

Q. In the cab?

A. That's right.

Q. Well, could you tell us for what purpose you gave him the money, Officer, if he was to give it back to you when he got back in the cab?

A. The reason I gave him the money, sir, was in case anyone asked for it, he was to use it as a flash roll and just [fol. 118] show the money, return with it to the cab and tell whoever asked for it that his partner was in the cab and would put an additional \$50.00 to it for the purchase of 100 capsules of heroin.

Q. Officer, how did you leave 6th and New York Avenue?

A. I walked.

Q. When did you get your taxicab?

A. I walked over to 7th and M and I caught the cab right on the corner.

Q. Could you tell us what buildings are on the corner of 6th and New York Avenue?

A. No, I could not, sir.

Q. Are you generally familiar with the vicinity there?

A. I really can't say that I am very familiar with the vicinity there, Mr. Williams.

Q. Do you recall what kind of taxicab it was that you caught at 7th and M?

A. I can't recall the taxi but I do know the driver.

Q. What was his name?

A. I believe it was Mr. Huban, if I am not mistaken.

Q. What did you say?

A. Mr. Huban.

[fol. 119] Q. And you knew that name before March 25th, didn't you?

A. No, sir, I did not.

Q. When did you first learn the driver's name?

A. When I first met him yesterday, sir.

Q. Was the taxicab there by prearrangement?

A. No, sir, it was a taxicab we had to hail that morning.

Q. Is it a fact that you made arrangements with the taxicab driver as to the route he should follow?

A. No, sir, we did not.

Q. Your say "we."

A. Well, should have said "I" did not. There were two of us in the cab, when I said "we."

Q. Who instructed the cabdriver as to your destination?

A. Let me see. I believe it was Clifford Reed, sir.

Q. Now, when the defendant Arthur Shepherd came out of the premises, you say, at 617 M Street, do you recall how he was dressed?

A. I remember he had on a wide-brim hat and I believe it was a brown leather jacket.

Q. And I think you testified yesterday that he got in [fol. 120] the back seat.

A. That's right.

Q. On the passenger side of the window?

A. That is correct.

Q. Who spoke to whom first? Did you speak to him or did he speak to you?

A. I don't believe either one of us spoke, sir. Clifford Reed was talking to Shepherd.

Q. What did Clifford Reed say to him?

A. I really couldn't hear exactly what he was saying, sir, and they were speaking in a sort of monotone at the time they entered the cab and when they entered the cab

they stopped talking and then I handed the money to Shepherd.

Q. Now, you mean to say you handed him the money, there was no conversation, no introduction, or anything; you just handed him the money?

A. That is correct, sir.

Q. Who got in the taxicab first, Officer?

A. Clifford Reed.

Mr. Stevas: For the record, at which time, now—when they first hailed the cab, or when the defendant came out of 617 M Street. The record won't show.

The Court: What time did you have reference to?

[fol. 21]. Mr. Williams: At the time when Clifford Reed was accompanied by Arthur Shepherd.

The Witness: At the time that Clifford Reed was accompanied by Shepherd, Clifford Reed entered the cab first, as he sat in the center between Shepherd and myself.

By Mr. Williams:

Q. Where did you have this money, in your pocket, Officer, or did you have it in your pocket or your hand?

A. I had the money in my left hand, the \$50.00.

Q. Is that the money you passed over to Shepherd?

A. That along with the \$50.00 which Clifford Reed handed to me.

Q. Did you examine the money at that time?

A. Yes sir, I took a glance at the money.

Q. All the bills?

A. That is correct, sir.

Q. Checked them to see if they were the same bills you gave him originally?

A. Yes, sir, I checked to see if they were five \$10.00 bills; that is what I checked for.

Q. You checked the serial numbers, too, didn't you?

A. No, I didn't check the serial number, sir.

Q. Then you couldn't say that those are the same bills [fol. 122] which you gave Clifford Reed originally, could you, Officer?

A. No, I couldn't say that, sir.

Q. Now, did you and Reed carry on a conversation en route up to 1330 Vermont Avenue where Reed lived?

A. Did you say Reed and I, sir?

Q. Yes, Clifford Reed?

A. While we were with Shepherd?

Q. While you were driving in a taxi?

A. No, I believe Shepherd was talking at that time, while we were en route to 1330 Vermont.

Q. But Reed didn't have anything to say?

A. No, sir, he didn't have anything to say, no.

Q. And did you have any conversation?

A. No, sir, I didn't have any conversation with him en route to 1330 Vermont.

Q. You didn't have anything to say?

A. No, sir, I did not.

Q. Now, you had been to 1330 Vermont prior to March 25th, had you not?

A. No, sir, I had not been to 1330 Vermont.

Q. How long had you known Clifford Reed prior to March 25th?

A. I first met Clifford Reed in February, at about [fol. 123] February 24th of this year.

Q. Had you met him as early as January of 1955, around January 20th?

A. I might have, sir. I really don't recall January 20th. I thought I had first met him in February.

Q. Could you tell us, Officer, who first introduced you to Clifford Reed?

Mr. Stevas: Now, just a moment. I will object to that on the ground it may be requiring the officer to disclose a confidential informant, and it has no bearing in this case, as to who introduced him to Clifford Reed.

The Court: He may answer.

The Witness: I would like to say, sir, a confidential informant did first introduce me to Clifford Reed.

By Mr. Williams:

Q. Could you tell us about when that was?

A. As I said, I believe it was February of this year.

Q. Now, Officer, you said that Arthur Shepherd had a conversation in the taxicab with Clifford Reed en route to 1330 Vermont Avenue.

A. That is correct, sir.

Q. And at no time did you have any conversation with Shepherd?

[fol. 124] A. No, sir, that is correct.

Mr. Stevas: If Your Honor please, for the record, may this show that you are still referring to en route between the two points?

Mr. Williams: I think that is the way I stated it, Mr. Stevas.

By Mr. Williams:

Q. Now, when you got out of the taxicab at 1330 Vermont Avenue, Officer, did you immediately leave the cab and go inside the premises?

A. No, sir, I did not immediately leave the cab.

Q. Did you pay the cabdriver?

A. No, sir; I gave the money to Roy Shepherd to pay the cabdriver.

Q. Now, what kind of money was it that you gave him? Was that some of your own money or was that some of these listed advance funds of the government?

A. No, that was change; in change.

Q. How much was it you paid him?

A. I believe it was one dollar.

Q. I think you testified yesterday, Officer, that later Agent Wilson and some other officers did come up there to 1330 Vermont Avenue?

A. I saw them in the vicinity, sir, yes.

[fol. 125] Q. You saw them in the vicinity. Did you have any conversation with them?

A. No, sir, I did not.

Q. Now, this dollar, Officer, that you say you paid the cab fare with, how much did you say you paid him?

A. I gave Shepherd a dollar in change.

Q. Was that to pay his cab fare?

A. That is what he requested from me, sir.

Q. He asked you for a dollar?

A. No, he requested a sum of money to pay the driver—for the taxi.

Q. Well, was it words directed to you or to Clifford Reed?

A. Well, it was just directed to either one of us in general, I assume, sir.

Q. Could you remember his particular words?

A. No, sir, I really can't remember his exact words at this time, no.

Q. Now, where along the route to 1330 Vermont Avenue was it that it was suggested that you go along up to Fairmont Street?

Mr. Stevas: I object to that. There is no testimony about any Fairmont Street.

The Court: I don't recall that.

[fol. 126]. Mr. Stevas: Do you mean Columbia Road?

Mr. Williams: I mean Columbia Road. I am sorry, Your Honor.

The Witness: Well, immediately after Shepherd and this Reed got into the taxi, and Shepherd requested that we accompany him to 13th and Columbia Road. I would say immediately upon his entrance into the taxi or shortly thereafter, before we actually started moving.

By Mr. Williams:

Q. And you say he asked you to come with him to 13th and Columbia Road?

A. No, he asked us to go to Blue's house.

Q. Did he tell you where Blue's house was at that time?

A. No, sir, he did not.

Q. Now, Officer, you testified that you refused to go along.

A. That's right.

Q. That was according to your plan or your instructions?

A. That was according to plans we had made previously; that is correct, sir.

Q. Previous to that evening?

A. Yes, that is correct.

[fol. 127]. Mr. Stevas: What was that "previous to that evening?"

You didn't question him about any evening.

Mr. Williams: Previous that evening.

Mr. Stevas: I object to that because the testimony is it happened in the early morning, not in the evening.

The Court: Well, he is asking the question.

Mr. Stevas: All right.

The Witness: I would like to correct that statement, sir.

The Court: Go ahead.

The Witness: I would like to say that previously that morning—

Mr. Williams: That morning.

The Witness: That is correct, sir.

By Mr. Williams:

Q. Could you tell us about what time that morning, Officer?

A. After about 2:30 a. m., when we met with the Agents and Officers at 6th and New York Avenue.

Q. Do you know a Dolores Terry, Officer?

A. Yes, sir, I do.

Q. And did you know her in connection with your experience and association with Clifford Reed?

[fol. 128] A. That is correct.

Q. Is it a fact that she introduced you to Clifford Reed, did she not?

A. No, sir, she did not.

The Court: Counsel, I don't think we can take all this time for a discussion. We have got to move along.

Mr. Williams: Very well, Your Honor.

By Mr. Williams:

Q. Officer, is it not a fact that on January 20, 1954, or 1955, I beg your pardon, that you had a transaction involving narcotics with Clifford Reed?

A. That is correct, sir.

Q. Then you were mistaken when you said that you didn't meet Clifford Reed until February of 1955, were you not?

A. That is correct, sir, I was mistaken, as to the month.

Q. Then would you want to further correct your testimony, Officer, in this respect: That obviously you met Clifford Reed even before January 20 of 1955?

Mr. Stevas: I object to that, because his testimony was that he might have met him in January, 1955; that he didn't recall that; so he is not correcting that testimony.

Mr. Williams: I submit this witness is perfectly qualified to make his own correction.

The Court: He has a right to make an objection to your

statement in your question, which he is doing, counsel, to an improper reference to the testimony which you are making. He has a perfect right to do that.

Go ahead.

The Witness: May I say, Mr. Williams, that to the best of my recollection I did not meet Clifford Reed prior to January 20, 1955.

By Mr. Williams:

Q. Then your statement is, Officer, that January 20, 1955, was the first time you met Clifford Reed?

The Court: No, that isn't what he said. That is not what he said at all. Now, that is an improper quotation of his testimony.

He said to the best of his recollection he didn't meet him before January 20th, I believe the date was, 1955.

The Witness: That is correct, sir.

Mr. Williams: Very well, Your Honor.

By Mr. Williams:

Q. Then, Officer, you would not say that it is impossible that you knew him before January 20, 1955, would you?

A. No, sir, I wouldn't say it is not impossible, no.

Q. And after you met him in January of 1955, how [fol. 130] often did you see him?

A. After I met him on January 20, 1955, I don't believe I saw Clifford Reed again until March 25, 1955.

Q. Then are you saying, Officer, that you were in his company only twice up until and including March 25, 1955?

A. That is correct, sir.

Q. Did you know where he lived?

A. No, sir, I—

Mr. Stevas: At which time?

Just a moment.

When?

The Court: What time were you referring to?

By Mr. Williams:

Q. Did you know where he lived on January 20, 1955?

A. No, sir, I did not know at that time where he resided.

Q. Did you know where he lived on March 25, 1955?

A. Yes, sir.

Q. And when did you learn where he lived on March 25, 1955?

A. When I met him in the company of the Agents and the other Officers.

Mr. Williams: Would you indulge me just a second, Your [fol. 131] Honor?

By Mr. Williams:

Q. Officer, at the time when you were leaving the cab at 1330 Vermont Avenue on March 25, 1955, would you tell us everything that was said by you to Shepherd?

A. Yes, sir.

When we arrived at 1330 Vermont Shepherd got out of the seat nearest the curb, Clifford Reed got out next, then I got out, and Shepherd went into the front seat and he turned, sitting out of the cab, facing Reed and myself.

Shepherd then requested that we be there when he comes back, as he is in a hurry, to be there when he comes back with the "stuff," I believe he said, as he was in a hurry to return to 617 M Street.

He then requested that we give him some taxi fare.

I then asked Shepherd where he was going, and he said "1300 block of Columbia Road."

I had some change in my pocket, and I counted out and gave to Shepherd \$1.00 in change.

Q: It wasn't then, Officer, by your testimony, until then, at that point when you were leaving the cab, that the destination of Shepherd was mentioned, was it not?

A. That is correct.

Q. And it was at that point that you refused to go [fol. 132] further?

A. No, sir, it was not at that point.

Q. You didn't go up there with him, did you?

A. No, sir, I did not.

Q. Now, at that time, Officer, you intended to wait there for him until he returned, did you not?

A. No, sir.

Q. Officer, calling your attention to the list which you say you put your signature on—

A. Yes, sir.

Q. —did you sign that—how did you sign it?

A. Well, I signed it with my full name, I believe, sir, Arthur Lewis, in my own handwriting.

Q. Was it with ink or pencil?

A. To the best of my recollection, sir, it was ink.

Q. It was your pen?

A. I can't recall at this time.

Q. Now, there came a time when you made a report as to the disposition of these funds, did there not?

I mean, the \$100.00 which you say you gave \$50.00 of originally to Reed, and later you got it back, and then later you gave it to Shepherd?

A. Yes, sir; there was a report on the use of those [fol. 133] funds, yes.

Q. By you?

A. Yes.

Q. Was that a written report or a verbal report?

A. A typed report, sir.

Q. And you signed it?

A. Yes, sir.

Q. Do you remember how you signed that report?

Mr. Stevas: I object to that as immaterial, Your Honor. He has to report.

The Court: He may answer it.

The Witness: Well, I signed it in my own handwriting. I imagine I signed my full name, Arthur Lewis.

Mr. Williams: Let's not talk about your imagination, Officer.

Can you remember?

The Witness: I would say yes, sir. I remember it. I signed it with my full name, Arthur Lewis.

By Mr. Williams:

Q. With ink or pencil?

A. With ink.

The Court: Counsel, I just will have to suggest that you take not so much time in consultation.

Mr. Williams: Very well, Your Honor.

We have no further questions of this witness.

[fol. 134]

Redirect examination.

By Mr. Stevas:

Q. Mr. Lewis, you say the first time you knew the destination of Shepherd was when you gave Shepherd the money for the cab fare?

A. That is correct, sir.

Q. Now, that was destination as to street, you mean.

A. That is correct.

Q. Because when he got into the cab, what did he tell you about where he was going to go?

A. He mentioned Blue's house.

Q. Now, you didn't memorize the serial numbers on all of these Government advance funds, did you, Mr. Lewis?

A. No, sir, I did not.

Q. Let me hand you what has previously been marked as Government's No. 3-C for identification, and ask you to look at that, if you will?

Now, having looked at Government's 3-C I will ask you if you can identify that?

A. Yes, sir. I have here in my—

Q. First, can you identify it?

A. Yes, sir, I can.

Q. And how can you identify it?

[fol. 135] A. Well, sir, there is a date on it. It is a listing, and it is signed in my own handwriting by myself in ink, and it shows the date March 25, 1955, 2:45 a.m., 6th Street and New York Avenue, Washington, D. C.

Q. Now, what do you identify Government's Exhibit 3-C to be?

A. The original money list which we prepared that morning of March 25, 1955.

Mr. Stevas: I have no further questions.

Mr. Williams: If Your Honor please, we would like to see this.

Mr. Harris: We haven't seen it.

Mr. Stevas: I haven't offered it in evidence yet.

The Court: I think they can see it.

Mr. Stevas: I don't care. You can see it.

Mr. Williams: Secret.

Mr. Stevas: I object to that, Your Honor, when Mr.

Williams says "seecative." I am not hiding anything. We have a perfect right.

The Court: That is an improper remark, counsel, and it should be stricken from the record, and the jury will pay no attention to it.

In view of the fact you went into it on examination, they have a right to cross examine on it, counsel.

[fol. 136] Mr. Stevas: I have no objection.

Mr. Harris: May we have a moment to look at it, Your Honor?

The Court: We will take a recess, then, so you can look at it on your recess time.

(Short recess taken.)

Mr. Stevas: The Government had no further questions of the witness.

Recross-examination.

By Mr. Williams:

Q. Officer, with regard to the list you identified, is your signature on it?

A. Yes, sir, it is.

Mr. Stevas: For the record, may it show he is referring to Government Exhibit 3-C.

The Court: It may so indicate.

Mr. Williams: Government's 3-C for identification.

By Mr. Williams:

Q. Had you seen the list subsequent to the time when you put your signature on it?

A. I can't say that I did, sir.

Q. Until this morning?

A. Until I was shown it just now by the United States Attorney, sir.

[fol. 137] Q. And did you know, Officer, that some of the bills had been—some of the serial numbers had been improperly listed on this list and that corrections had been made on it?

A. No, sir, I don't believe that I knew that.

Mr. Williams: No further questions.

Redirect examination.

By Mr. Stevas:

Q. Showing you Government's 3-C, I will ask you to look at that Government's 3-C again, and did you read over Government's 3-C in fine detail before you witnessed it by signing your name on it?

A. No, sir, not in fine detail.

Q. Well, did you notice any initials appearing on Government's 3-C?

Do you know how the initials got on Government's 3-C?

A. Oh, yes, sir, I do.

Q. Can you explain how those initials got on there?

Where do the initials appear on there?

A. Well, the initials appear in the first column, the upper middle, on the one dollar silver certificates.

Q. And do you know how those initials got on there?

A. Yes, sir.

[fol. 138] Q. Can you tell us how they got on there?

A. Well, in calling them out there were several numbers which were not heard at first, and Fred Wilson, I believe, was writing the numbers down and he was corrected, so, in order to show the correction, he placed his initials alongside the corrections on that sheet.

Mr. Stevas: No further questions.

The Court: You may step down, Officer.

Mr. Williams: I should like to ask the witness, if I may, Your Honor.

Recross-examination.

By Mr. Williams:

Q. First, Mr. Witness, as to the correction, do you recall whose initials were placed on there?

A. Yes, sir. I think three people placed their initials on there as confirmation. I believe it was Ivan Wurns, Frank G. Pappas, and Fred E. Wilson.

Q. Now, did Clifford Reed sign this list also, in your presence?

A. I believe he did, sir.

Q. And the correction was made in your presence?

A. That is correct.

Mr. Williams: No further questions.

The Court: All right; step down.

[fol. 139] (Thereupon the witness left the stand.)

Mr. Stevas: I will call Fred Wilson.

Thereupon,

FRED EARLE WILSON, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination,

By Mr. Stevas:

Q. Mr. Wilson, will you kindly give us your full name, and spell your last name for the reporter?

A. Fred Earle Wilson—W-I-L-S-O-N (spelling).

Q. And where are you employed, sir?

A. I am a Narcotic Agent for the United States Treasury Department. I am employed at the Bureau of Narcotics, Washington, D. C.

Q. And how long have you been employed by the Federal Bureau of Narcotics, Agent Wilson?

A. Four years.

Q. Now, Agent Wilson, directing your attention to the month of March of this year, did there come a time in the early morning hours of March 25 when you had occasion to see one Clifford Reed?

A. Yes, sir.

Q. Did there come a time when you placed Clifford Reed under arrest?

[fol. 140] A. Yes, sir.

Q. Following that, did there come a time when you had a conversation with Clifford Reed?

A. Yes, sir.

Q. Now, can you tell us the approximate time when the arrest and the conversation took place?

A. The arrest took place at approximately 1:35 a.m. on March 25, 1955, at 1330 Vermont Avenue, Northwest, and the conversation took place immediately following the arrest of Clifford Reed.

Q. Had you known Clifford Reed prior to the date March 25, 1955?

A. Yes, sir.

Q. And had you had conversations with him prior to March 25, 1955?

A. Yes, sir.

Q. And as a result of those conversations had you received information from Clifford Reed?

A. Yes, sir.

Q. Had that information proven to you to be reliable?

A. Yes, sir.

Q. On the morning of March 25th did you receive certain information from Clifford Reed?

A. Yes.

Q. Now, as a result of the conversation you had with [fol. 141] Clifford Reed on the morning of March 25, did you have occasion to make a phone call?

A. Yes, sir.

Q. And to whom did you make that call?

A. Arthur Lewis.

Q. Did you have a conversation with Arthur Lewis?

A. Yes, sir.

Q. Now, as a result of that conversation, did there come a time when you saw Arthur Lewis?

A. Yes, sir.

Q. And can you tell us the approximate time and the vicinity where you met Arthur Lewis?

A. I met him in the vicinity of 7th and T, about 2:15 a.m., as I recall, when I met Lewis that morning.

Q. And in what section of the city was that?

A. That was at 7th and T where I picked him up.

Q. In the Northwest?

A. Yes, sir.

Q. Now, did you go anywhere from there?

A. Yes, sir.

Q. And where was it that you went from there?

A. 6th Street and New York Avenue, Northwest, Washington, D. C.

Q. Now, who all was present at 6th and New York [fol. 142] Avenue Northwest?

A. Ivan Wurms, a detective of the Metropolitan Police Department, Agent Frank Pappas, Clifford Reed, Arthur

Lewis, two investigators from the Virginia State Police by the name of Edward Thompson, Robert Bowman, and myself.

Q. And these two men from the State of Virginia, were they assigned to work here in the District of Columbia, or what was their connection with you in this case?

A. They were observers from the Virginia State Police Department.

Q. Were they trainees in the narcotics program for the State of Virginia?

A. Yes, sir.

Q. Now, when you all got to 6th and New York Avenue, was it—

A. Yes, sir.

Q. Tell us just what you did at that time, if anything.

A. I prepared a hundred dollars official Government advance funds by recording the serial numbers.

Q. Where did you get the hundred dollars from?

A. Some of the advanced funds I had at the time and some of it I received from Agent Pappas.

[fol. 143] Q. And you say you "prepared it."

By "preparing it," what did you do with that money?

A. I recorded the serial numbers and the denominations of the money.

Q. Handing you what has been previously marked as Government's 3-C for identification, I will ask you to look at that, if you will.

Having looked at that, can you identify Government's No. 3-C?

A. Yes, sir.

Q. And how can you identify it?

A. I identify it by my handwriting recording the serial numbers and denominations and my signature.

Q. Now, with respect to the first column on Government's 3-C for identification, do you see some initials appearing in there?

A. Yes, sir.

Q. Can you tell us how those initials came to be placed in there?

A. Yes, sir. Ivan Wurms was reading the serial numbers to me, and on the one bill I copied the number wrong. In this particular instance it was 025999 and he gave me

the number 025 three nine's, and I thought it was 025399.
[fol. 144] Q. Now, you say Wurms was calling the numbers.

A. Yes, sir.

Q. And the recordation is in those handwriting; that is, the listing?

A. Mine.

Q. And was anyone else participating in this recordation of the bills?

A. The list was checked later by Agent Pappas and Officer Wurms.

Q. Now, did you have occasion or in your presence was anything done with respect to Clifford Reed at that time?

A. Yes, sir; I searched Clifford Reed.

Q. And for what purpose did you search him?

A. To find if he had any narcotics or money on his person.

Q. And what did your search disclose at that time?

A. That he did not have either.

Q. Now, in your presence did Clifford Reed have a conversation with Officer Wurms and Agent Pappas?

A. Yes, sir.

Q. And was that conversation—how did that conversation compare with the conversation you alone had with Clifford Reed?

[fol. 145] A. It was—I had Clifford Reed repeat to Pappas and Wurms what he had told me about his narcotic source of supply.

Q. And was Mr. Arthur Lewis there at that time, too?

A. No, sir.

Q. Did there come a time, then, when you had a conversation with Arthur Lewis at 6th and New York Avenue?

A. Yes, sir.

Q. And following that conversation what, if anything happened to the money which you recorded the numbers of?

A. I gave it to Arthur Lewis.

Q. And how much money was there?

A. One hundred dollars.

Q. And did you give any instructions to Arthur Lewis?

A. Yes, sir.

Q. Now, after you gave these instructions to Arthur

Lewis, what, if anything, did you see Arthur Lewis do?

A. At that time, at 6th and New York Ave, I saw Arthur Lewis and Clifford Reed walk east on New York Avenue.

Q. Now, what, if anything, did you and the other persons in your presence do?

[fol. 146] A. Ivan Wurms and Officer Bowman and myself went to the vicinity of 617 M Street Northwest and parked the Government automobile.

Q. And did you see what happened to the other men when you and Ivan Wurms left the vicinity?

A. No, sir, but I knew where they were.

Q. Now, you say you were in a Government vehicle.

A. Yes, sir.

Q. And was there anything unusual about that Government vehicle on this particular night, or how was it equipped?

A. It was radio-equipped, sir.

Q. And can you describe this particular radio, how it could be used on this particular night, and what you used — what station, or anything, you used?

A. The particular Bureau to which I am assigned is on the Armed Services Police frequency in Washington, D. C. It is WAR-200, and we have the use of car-to-car communication on that frequency, by relating the message to the dispatcher and having him relate it to the other car.

Q. Were you able on this night of March 25 to converse over the radio directly with the officers in the other automobile?

A. Yes, sir, we were going car-to-car.

Q. And were they able to converse directly with you [fol. 147] in your car?

A. Yes, sir.

Q. And did you have such conversations on this particular night?

A. Yes, sir.

Q. Now, you say you went where, after Clifford Reed and Lewis left you?

A. To the vicinity of 617 M Street, Northwest.

Q. Tell us, then, just what happened from that time on, if you will.

A. At about 3:05 a.m. we observed Arthur Lewis and Clifford Reed walking west on M Street. A few minutes

after Lewis had passed by the alley, in which we were parked, we pulled up to M Street and saw Arthur Lewis and Clifford Reed getting into a cab at 7th and M Streets.

Officer Wurns was driving the car and we made a U turn in the intersection of 7th and M Streets and parked on the southwest corner in front of the People's Drug Store at 7th and M Streets.

The taxicab in which Lewis and Reed were riding stopped across the street from 617, or on the south side of M Street. Clifford Reed got out of the taxicab and went into the areaway which leads to the entrance of 617 M Street.

A few minutes later Reed came out with a man whom [fol. 148] he had described the clothing he would probably be wearing, and got into the taxicab.

The taxicab was followed to 1330 Vermont Avenue, Northwest, where the taxicab driver stopped, and Arthur Lewis and Clifford Reed got out of the taxicab and Lewis paused momentarily at the window of the taxicab, driver and Arthur Roy Shepherd got out of the cab and got into the front seat and then Lewis and Reed went directly toward 1330 Vermont Street, Northwest—toward the house, to enter the house.

Q. Now, had you any previous conversation with Mr. Arthur Lewis with respect to the manner in which he should enter the address 1330 Vermont Avenue, Northwest?

A. Yes, sir.

Q. And in what manner did Arthur Lewis enter the premises 1330 Vermont Avenue, Northwest?

A. Lewis and I had agreed on a signal that if he had to put the official Government money, as we say, "out in front" to buy the narcotics, that he was to walk directly into the house at 1330 Vermont Avenue, and if he didn't give the money to the person, that he was to remain or loiter in front of the house.

Q. On this particular morning, when you saw Lewis leave the vicinity of the taxicab to go toward the house, 1330 Vermont Avenue, how did he go on this occasion?

[fol. 149] A. He went directly toward the house.

Q. Now, before you left down there at 6th and M Streets Northwest, getting back to that place now—during the time when you say Clifford Reed left the taxicab and went into a house, where were you?

A. We were parked between the alley entrance and 7th Street on the south side of M Street.

Q. That was you and who else?

A. Wurms and Officer Bowman.

Q. And who was in the other car?

A. Agent Pappas and Officer Thompson.

Q. Now, at that time you say you were parked by People's Drug Store?

A. Originally we had been parked at People's Drug Store, but after the taxicab had moved and stopped, we moved into the position that had formerly been occupied by Agent Pappas' automobile.

Q. So then you were between what streets?

A. We were between 6th and 7th Streets on the south side of M Street.

Q. And how far ahead of you was the cab then at that time when it was parked—or where was the cab parked?

A. Well, the cab was parked across from 617 M Street, and it was probably maybe five or six houses.

[fol. 150] Q. Away from you.

A. Yes, sir.

Q. Now, at that time when you had the observation and saw Clifford Reed and the man come out, could you see Agent Pappas at that time?

A. No, sir.

Q. Did you have occasion to communicate with Agent Pappas before the taxicab or when the taxicab left that vicinity?

A. Yes, sir.

Q. And did you give him certain information?

A. Yes, sir.

Q. Now, when the taxicab left, did you immediately move from the vicinity?

A. No, sir.

Q. What did you do?

A. We allowed Agent Pappas to take up the surveillance of the taxicab on 6th Street and after the cab had proceeded a safe distance we made the turn from M Street on to 6th Street.

Q. And at that time did you have further communications with Agent Pappas?

A. Yes, sir.

Q. And then you say the cab ended up at 1330 Vermont [fol. 151] Avenue?

A. Yes, sir.

Q. Now, after Mr. Lewis and Clifford Reed got out of the taxicab, did you see what happened to the taxicab then, from then on?

A. Yes, sir.

Q. And what did it do at that time?

A. The taxicab driver made a U turn after Arthur Roy Shepherd had gotten to the front seat with the driver; went around Logan Circle and continued north on 13th to 13th and Q Streets, Northwest.

Q. Did you follow the cab then from the time it made this U turn; did you, and together with Pappas, follow this taxicab?

A. Yes, sir.

Q. And what kind of taxicab was it?

A. A Skylark cab.

Q. Do you know the name of the driver of this cab?

A. Yes, sir.

Q. And what is his name?

A. Carl Hoban.

Q. That is H-O-B-A-N?

A. Yes, sir.

Q. Prior to the early morning hours of March 25th, had [fol. 152] you, to your knowledge, seen or talked with this taxicab driver?

A. No, sir.

Q. He hadn't been at 6th and New York Avenue, had he?

A. No, sir.

Q. Did you have any prearrangement with him to pick up Arthur Lewis and Clifford Reed?

A. No, sir.

Q. Now, did there come a time when that taxicab finally made a stop?

A. Yes, sir.

Q. And where was that?

A. At 13th and Q Streets.

Q. Well, did there come a time when you got out of the car which you were riding in?

A. Yes, sir.

Q. And where was that?

A. At 13th and Columbia Road, Northwest.

Q. And where was the taxicab at that time?

A. It was in the 1300 block of Columbia Road, Northwest.

Q. And had you followed the taxicab from the time it made the U turn in front of Clifford Reed's house up to 13th and Q, from that point up to 13th and Columbia Road?

[fol. 153] A. Yes, sir.

Q. And did it go directly to the 1300 block of Columbia Road?

A. No, sir.

Q. Well, do you know how it went?

A. Yes, sir.

Q. Was it a circuitous route that it went?

A. Yes, sir.

Q. Now, did you see the cab stop up there in the 1300 block of Columbia Road?

A. Yes, sir.

Q. And what did you see happen then?

A. I saw Arthur Roy Shepherd get out of the taxicab and go into 1337 Columbia Road by the basement entrance.

Q. And when the defendant Shepherd went into this basement entrance, were you still in the automobile with Officer Wurms?

A. No, sir.

Q. You were on foot?

A. Yes, sir.

Q. What did you do when you saw Arthur Roy Shepherd go into this premises?

A. I hurried up the street and, after he had gone into the basement, I slipped down the steps and the entrance [fol. 154] to the basement was light, with a light, the outside light was on, and I slipped down the steps and the hallway was lighted and I peeped around the corner to see if there was anybody in the hallway and there wasn't and I came back upstairs.

Q. When you came back up these stairs, you were on the public sidewalk area then?

A. Yes, sir.

Q. What did you do then?

A. I crossed Columbia Road and hid behind a tree.

Q. Now, what happened when you were behind this tree?

A. I saw a light being turned off and on in the front part of 1337 Columbia Road, in the basement.

Q. Now, what happened after you saw this light in the basement?

A. A few minutes later I saw Arthur Shepherd come out of the basement and get in a waiting taxicab which was double-parked.

Q. When you were over by this tree, after you had come out from looking in the hallway, when you were over by the tree, was the light at that time in this basement room on, or was it off, at that time when you first got behind the tree?

[fol. 155] A. It was off.

Q. It was off?

A. Yes, sir.

Q. You saw the light come on?

A. Yes, sir.

Q. Did you see the light go off?

A. Yes, sir.

Q. Was it after the light went off that you saw Shepherd again?

A. Yes, sir.

Q. And where did you see him then?

A. Coming out of the basement entrance to 1337.

Q. And what did he do when he came out of the basement entrance?

A. Got into a taxicab waiting.

Q. Was this the same taxicab which he had arrived in to get to those premises?

A. Yes, sir.

Q. By the way, where was this taxicab parked in relation to the street and this address where the defendant went into?

A. It was parked a few doors above 1337 Columbia Road.

Q. Was it parked next to the curb?

[fol. 156] A. No, sir, it was parked double-parked.

Q. Double-parked?

A. Yes, sir.

Q. Columbia Road is a one-way street at that point, isn't it?

A. Yes, sir.

Q. Now, when you first went down these steps leading to the entrance 1337, could you see this window where you later saw a light come on?

A. Yes, sir.

Q. And at that time when you first went down the steps to peak into the hallway, was there a light on in that room?

A. In the room?

Q. In this—through this window that you said—

A. No, sir.

Q. There was no light on there?

A. No, sir.

Q. In the hallway was there a light?

A. Yes, sir.

Q. And at the entrance there was a light?

A. Yes, sir.

Q. Now, what did you see when you peaked into the hallway?

[fol. 157] A. Nothing.

Q. About how long is this hallway in feet, if you can tell us?

A. It is roughly as long as the jury box.

Q. And you saw no person in that hallway?

A. No, sir.

Q. Now, after the defendant Shepherd got into the taxicab, what happened?

A. The taxicab proceeded west on Columbia Road to 14th Street.

Agent Pappas, who had been parked at the corner of 13th and Columbia Road watching the cab and myself come up the street, I got into Agent Pappas' car and we followed the car on Columbia Road to Harvard and from Harvard—from Columbia Road to 14th Street and south on 14th to Harvard. At Harvard Street the car proceeded south on 13th Street, and at 13th and Fairmont we stopped the taxicab.

Q. At the time you got into Agent Pappas' car, were the headlights on or off on his car at that time?

A. They were off.

Q. Did you or in your presence did Agent Pappas have a radio conversation with someone at that time?

A. Yes, sir, I had a radio conversation.

[fol. 158] Q. And with whom did you have a radio conversation?

A. Officer Wurms.

Q. You couldn't see Officer Wurms at that time when you were talking to him on the radio, could you?

A. Yes, sir, I could, after I had gotten into Agent Pappas' car.

Q. Where was Officer Wurms when you talked to him on the radio?

A. At that time he was following the taxicab.

Q. All right, sir.

Did there come a time—you say—when the cab was stopped?

A. Yes, sir.

Q. And how was the taxicab stopped?

A. By Officer Wurms pulling in front of it and blowing his horn.

Q. You heard that?

A. Yes, sir.

Q. And were there any lights flashing at that time that you could see?

A. On Officer Wurms' car?

Q. Yes.

A. No, sir.

Q. This wasn't a marked police car, the cruiser, was [fol. 159] it?

A. No, sir.

Q. Now, you saw the cab stop?

A. Yes, sir.

Q. Did you see anything else at that time—or tell us what you did.

A. Agent Pappas' was directly behind the taxicab when Officer Wurms stopped it, and the driver of the taxicab opened the door—

Mr. Harris: Pardon me, Your Honor. I hate to interrupt, but that is not responsive to the question as to what Officer Wilson did.

The Court: He asked what he saw.

Mr. Harris: No, he didn't, Your Honor. He asked what he did.

The Court: No, he asked what he saw.

Mr. Harris: Did he—I beg your pardon.

The Court: Go ahead.

Mr. Stevas: I will withdraw it and repeat my question.

By Mr. Stevas:

Q. Tell us what you saw and what you did at that time when you pulled up behind the cab?

A. I saw Officer Wurms stop the cab, and Agent Pappas [fol. 160] was driving directly behind him.

I observed the cabdriver open the cab door and the dome light on the taxicab flashed on. At that time I saw Arthur Shepherd lean forward in the front seat of the taxicab.

Q. Now, will you demonstrate for these members of the jury just what you saw the defendant Shepherd do at that time?

A. I saw him lean forward like this.

Q. Bent over?

A. Yes, sir.

Q. Now, did you have a conversation with someone when you saw that?

A. As soon as the cab was stopped at that time, it was a momentary thing, and the cab was stopped, and Shepherd did it at the same time, and Officer Wurms came around the car and I said to him, "Look under the front seat."

Q. Now, what happened after that, if anything?

A. I took Shepherd from the taxicab and told him he was under arrest, and Officer Wurms looked under the seat and recovered a small brown manila package.

Q. Now, did you have occasion to look inside that small brown manila package?

[fol. 161] A. Yes, sir.

Q. And what, if anything, did you find in that package?

A. I found a hundred capsules of suspected heroin.

Q. Did you have occasion while—this is still at what place in the District of Columbia?

A. 13th and Fairmont Streets, Northwest.

Q. In the District of Columbia?

A. Yes, sir.

Q. Did you have occasion while right there in that area,

to do anything with the contents of this small brown envelope?

A. Yes, sir.

Q. Tell us just what you did?

A. I gave it a field test and it showed that the substance contained an opium derivative.

Q. By a "field test" what do you mean you did on it?

A. We have a small test-tube affair that is prepared by the chemist that is a reagent; it is called a reagent, and if any suspected drug is given this test, and it has an opium base, it turns a reddish-purple color.

Q. Did you have occasion to have any conversation with the defendant Shepherd at that time?

A. Yes, sir.

[fol. 162] Q. By the way, do you see the defendant Shepherd here in the courtroom today?

A. Yes, sir.

Q. And will you point to him, please?

A. Shepherd is the gentleman at the end of the counsel table.

Mr. Stevas: May the record show that the witness points to the defendant Roy Shepherd.

The Court: It may so indicate.

Mr. Stevas: Correction; Arthur Roy Shepherd.

By Mr. Stevas:

Q. You say you had a conversation with him there.

A. Yes, sir.

Q. Tell us just what the defendant Arthur Roy Shepherd said to you at this place and time?

Mr. Williams: If Your Honor please, I submit that whatever Arthur Roy Shepherd said, if Your Honor will instruct the jury that it applies not to the defendants who were not present.

The Court: This conversation applies only as to the defendant Shepherd, members of the jury.

Go ahead.

By Mr. Stevas:

Q. Tell us what the conversation was at that time that [fol. 163] you had with Arthur Roy Shepherd?

A. After I took Shepherd from the taxicab I took some money from his pockets and I was looking for my marked money and he didn't have it, and I asked him where he had been, and he said he had been up on Columbia Road, and I said, "Where on Columbia Road?"

And he said, "Up at Blue's place."

And I says, "Where is that?"

And he said, "Up there in the 1300 block of Columbia Road."

And then I asked him if the package that was found under the seat was his, and he said that it wasn't.

So, a few minutes later I asked him where he got that package, and he said that it was his package and he had got it from 1337 Columbia Road from behind a fire extinguisher.

And I asked him why he had gone to 1337 Columbia Road and looked behind a fire extinguisher, and he said that he had met Clifford Reed—I think he referred to him as "Cliff," and another fellow, and he said that this fellow told him that if he would take—that he would pay his cab fare and if he would go to 1337 Columbia Road and go look behind a fire extinguisher, he would find a package, and if he would bring that package back to him he would give him ten dollars.

[fol. 164] That was about the extent of the conversation with Shepherd.

Q. Now, you say that the defendant was searched?

A. Yes, sir.

Q. And you didn't find any of the Government-marked money?

A. No, sir.

Q. Did you find anything on the defendant's person at the time he was searched?

A. Nothing but the money he had.

Q. How much was that, if you recall?

A. To the best of my recollection it was fifty-six dollars and some-odd change.

Q. And what, if anything, did you do with that fifty-six dollars and change?

A. I gave it back to him.

Q. Now, following that conversation, then, with the—

By the way, did you know a person by the name of Blue?

A. Yes, sir.

Q. And who did you know that used the name of Blne?

A. William Miller.

Q. And do you see William Miller here today?

A. Yes, sir.

Q. Will you point to him, please?

[fol. 165] A. William Miller is the gentleman sitting next to Mr. Williams.

Mr. Stevas: May the record show, if Your Honor please, the Agent points to the defendant William Miller.

The Court: It may so indicate.

By Mr. Stevas:

Q. Did you have an occasion to go anywhere, then after this conversation and field test; did you go any place, then, after that?

A. Yes, sir.

Q. And where was that that you went?

A. Went to 1337 Columbia Road, Northwest.

Q. Now, let me hand you what has been previously marked for identification as Government's No. 1 and 1-A, and I will ask you to look at those, if you will.

And having looked first at Government's No. 1, I will ask you if you can identify Government's No. 1?

A. Yes, sir.

Q. Now, how can you identify Government's No. 1?

A. I can identify it by my initials, the time, 3:45 a. m., and the date, 3-25-55.

Q. What do you identify Government's No. 1 to be?

A. That is the envelope in which I took the evidence from Exhibit 1-A and placed in this envelope for transmittal to [fol. 166] the United States Chemist.

Q. And when you placed it in that small envelope did you have occasion to do anything with that small envelope?

A. Yes, sir.

Q. What did you do with the small envelope?

A. I placed it in a lock-sealed envelope and prepared it with the necessary information for transmittal to the United States Chemist on March 28, 1955.

Q. Now, you placed it in that lock-sealed envelope, though, on what date, Agent Wilson?

A. The 26th of March.

Q. Now, the evidence you obtained from the taxicab through Officer Wurms on what date?

A. I didn't understand you.

Q. What date was it that you first got Government No. 1?

A. March 25, 1955.

Q. At what time?

A. At about 3:35 or 3:40 a. m.

Q. And where did Government's No. 1 remain from 3:35 a. m. until you placed it in the lock-sealed envelope?

A. I had it in my possession until I returned to the office and at the office I placed it in a safe which I have.

Q. And when you speak of "office," you are speaking of [fol. 167] what office?

A. The Washington Branch office of the Bureau of Narcotics.

Q. And you placed it in the safe?

A. Yes, sir.

Q. Did there come a time, then, when you took it out of the safe?

A. Yes, sir.

Q. And when was that?

A. On March 26th.

Q. And then what did you do with it when you took it out of the safe?

A. I weighed it and sealed it and prepared it for the Chemist.

Q. And is that the time when you put it in the lock-sealed envelope?

A. Yes, sir.

Q. What did you do with the lock-sealed envelope into which you had placed Government's No. 1?

A. I let it remain in the safe until Monday morning, March 28th.

Q. On Monday morning, March 28th, did you return to the safe?

A. Sir?

[fol. 168] Q. Did you go back to the safe?

A. Yes, sir.

Q. What did you do then?

A. I took the evidence to Dr. Young, the United States Chemist.

Q. You took it out of the safe?

A. Yes, sir.

Q. You personally delivered it to Dr. Young?

A. Yes, sir.

Q. Now, with reference to Government's No. 1-A, I will ask you if you will look at that?

A. Yes, sir.

Q. And having looked at that, I will ask you if you can identify Government's No. 1-A?

A. Yes, sir, I can identify it.

Q. And how can you identify that?

A. I have it marked with my initials and the date, 3-25-55.

Q. And what do you identify Government's 1-A to be?

A. That is the envelope containing the suspected heroin I took from Arthur—or that was taken from under the front seat of the taxicab.

Q. Now, what, if anything, did you do with Government's 1-A after you obtained it on March 25th?

A. I forwarded it to the Federal Bureau of Investigation, Single Fingerprint Section, for fingerprints.

Q. Is the envelope in the same color condition today as it was on the morning of March 25th when you obtained it, that is, 1-A?

A. No, sir.

Q. What color was it on the morning that you first obtained it?

A. It was the color of this envelope (indicating).

Q. Yellow manila envelope color?

A. Yes, sir.

Q. Do you know how the color was changed on the other, 1-A?

A. Yes, sir.

Q. How was that changed?

A. It was changed through a chemical process which the F. B. I. employs when they develop latent fingerprints, or latent impressions.

Q. By the way, did you have occasion to count the number of capsules in Government's No. 1?

A. Yes, sir.

Q. How many capsules did you find to be contained therein?

[fol. 170] A. One hundred capsules.

Q. And when you speak of capsules, can you describe that for the members of the jury, what you mean by "capsule?"

A. A capsule is a small gelatin holder which is used by pharmacists to make pills, and they come in various sizes. The gelatin capsules come in various sizes.

Q. Now, Agent Wilson, now getting back, now, you say you then went to 1337 Columbia Road, Northwest?

A. Yes, sir.

Q. That is in the District of Columbia too?

A. Yes, sir.

Q. Now, tell us what happened when you got to 1337 Columbia Road, if you will.

A. Officer Wurms and I went up to the front of the house, and I saw the lights being turned off and on and looked around at those two windows in the front of the house, and then I went back and went down the entrance-way into the hallway and went up to the doorway that leads into the back, to Apartment No. 1 in the basement of 1337 Columbia Road.

Q. You say you went down; you mean down the steps.

A. Yes, sir.

Q. Now, was this the same steps that you had previously seen the defendant Shepherd go down?

[fol. 171] A. Yes, sir.

Q. And those are the steps that you had previously gone down when you peaked into the hallway?

A. Yes, sir.

Q. Did you have occasion, when you got into the hallway, to look around?

A. Yes, sir.

Q. And how many doors did you see in there after you got into the hallway?

A. There are three doors; one that leads into the hallway from the outside; one leads off into another room; and one that leads off into the back apartment of 1337 Columbia Road.

Q. How many apartments were in that basement?

A. Just one, sir.

Q. Now, did there come a time when you were at the door to this Apartment 1-A?

A. Yes, sir.

Q. Tell us what happened from that time on, if you will.

A. I put my ear to the door and was listening to see if I could hear anybody moving around inside, and Officer Wurms joined me at the door, and so he knocked on the door and in a very low voice he said, "Blue, police, open [fol. 172] the door," and somebody from within the room says, "Who's there?" and he says, "Blue, open the door, police," and he was saying it very quietly.

Q. What happened at that time?

A. The door was opened very slightly, and—

Q. Could you see who opened the door?

A. Yes, sir.

Q. And who was that that opened the door?

A. William Miller.

Q. Did you recognize him?

A. Yes, sir.

Q. Is he the man that you knew as Blue?

A. Yes, sir.

Q. And did you know him prior to that occasion?

A. Yes, sir.

Q. Had he met you prior to that occasion?

A. Yes, sir.

Q. Was that while you were an Agent with the Federal Bureau of Narcotics?

A. Yes, sir.

Q. What happened then?

A. He said, "What do you-all want?" And we says, "Police, you are under arrest, we want in." He says he was not going to let us in, or something like that, and [fol. 173] so Officer Wurms took ahold of the door and pulled it open.

Q. Now, did this door open into the apartment or open out into the hallway?

A. Opened out into the hallway.

There was a short struggle there between Wurms and Miller to open the door and finally the door was forced open and we got ourselves into the apartment.

Q. What happened then?

A. I said, "Well, look who's here, my friend Blue," and said, "You are under arrest," and told him to sit down.

And Officer Wurms walked over to a lady who was later identified to me as Bessie Byrd.

Q. Do you see Bessie Byrd here today?

A. Yes, sir.

Q. Will you point to here, please?

A. She is the lady at the end of the counsel table, between Mr. Miller and Shepherd.

Mr. Stevas: May the record show that the witness points to the defendant Bessie Byrd.

The Court: It may so indicate.

By Mr. Stevas:

Q. Will you continue then as to what happened?

A. We began an immediate search of the room for the [fol. 174] money, and Officer Wurms brought me a roll of money and handed it to me.

Q. Did you see where he got that money from?

A. Yes, sir.

Q. Where did he get the money?

A. He got it from Bessie Byrd.

Q. Did you see where Bessie Byrd got the money from?

A. Yes, sir.

Q. Where did she get it from?

A. From the housecoat pocket that she had on.

Q. And what did you do, if anything, with the money that Officer Wurms handed to you?

A. I began checking the serial numbers against the list in the presence of William Miller and Bessie Byrd.

Q. What did you find when you checked those serial numbers?

A. I found thirty-four dollars of the money that Arthur Lewis had given Roy Shepherd.

Q. Those serial numbers corresponded to the list you had previously made?

A. Yes, sir.

Q. Now, during this particular time, where was the defendant Miller and the defendant Shepherd?

[fol. 175] A. The defendant Shepherd remained outside with Officer Thompson, and then Thompson brought Shepherd into the apartment, and Miller was handcuffed to Shepherd and they were placed beside—there was a dresser

and Miller was sitting next to the end of the dresser, Shepherd was handcuffed to him, and I was standing at the dresser checking the money.

Q. Now, after checking this money, tell us what happened?

This was the thirty-four dollars?

A. Yes, sir.

Q. What happened following that?

A. We continued searching the place, and about an hour or so later there was some more money recovered by Officer Wurms.

Q. Did you see where that money was recovered from?

A. Yes, sir; I saw where part of it was recovered from.

Q. Where was that?

A. From between the sheets of the bed of the room in which we were.

Q. Did you have occasion to do anything with that money?

A. Yes, sir, I checked that money.

[fol. 176] Q. And what did you find when you checked that money?

A. I found sixty-six dollars of the money that had been given to Arthur Roy Shepherd by Arthur Lewis.

Q. Was that money checked against the list that you had recorded the serial numbers on?

A. Yes, sir.

Q. Now, did there come a time following that when you did anything else in the apartment, or in your presence that someone else found anything else?

A. At about 5:30 a.m., Officer Wurms was in the furnace room that adjoins Apartment No. 1, and which leads down from the upstairs, and he called to me and I went into the furnace room and he says, "Look what I found," and I looked down and there was a quantity of small manila envelopes, five packages of suspected heroin, and some other paraphernalia that would be used with a cutting plant for heroin.

Q. By "cutting plant," what do you mean by "cutting plant?"

A. The capsules, empty capsules, or small manila envelopes, or bags which would be used to facilitate the transportation.

Q. What does the term "cut" mean in the narcotic traffic?

A. A plant is the——

[fol. 177] Q. The term "cut," what does that mean?

A. I have to explain what "plant" is to explain what "cut" is.

A plant is a quantity of heroin, and when you cut the plant you add milk sugar or some other form of adulterant to it to cut it.

Q. That is to weaken the strength of it from pure heroin.

A. Yes, sir.

Q. Now, let me hand you what has previously been marked for identification as Government's Exhibit No. 3-A and 3-B and Government's Exhibit 3, the large envelope.

Will you examine those three envelopes, please?

Now, with respect to Government's Exhibit No. 3-B, can you identify Government's No. 3-B?

A. Yes, sir.

Q. For identification.

A. Yes, sir.

Q. And how can you identify that?

A. I have it, by my handwriting, it says "\$34.00 official advance funds recovered from Bessie Byrd by Ivan Wurms."

Q. What do you identify Government's 3-B to be?

A. As the money that was recovered from Bessie Byrd [fol. 178] and placed in this envelope.

Q. And who placed it in that envelope?

A. I did, sir.

Q. And with respect to Government's No. 3-A, can you identify that?

A. Yes, sir. I identify it by "\$66.00 official advance funds which was recovered from the bed on which William Miller was sleeping."

Q. And what, if anything——

Who put that Government's 3-A in the small envelope?

A. I did.

Q. And that is the money which you checked against the list?

A. Yes, sir.

Q. And you likewise checked Government's 3-B for identification against your list, the serial numbers?

A. Yes, sir.

Q. And you identify that to be what, then, Government's 3-A and 3-B, together, to be what?

A. As the marked money which had been previously given to Arthur Shepherd.

Q. And what was the total amount of Government's 3-A and 3-B when you placed them in those envelopes?

A. One hundred dollars.

[fol. 179] Q. What, if anything, did you do, then, with those envelopes?

A. I placed them in a lock-sealed envelope and surrendered them to Narcotic Agent Frank Pappas.

Q. Now, handing you what has been marked as Government's 3-C, which you previously have identified as the listing, what, if anything, did you do with Government's No. 3-C?

A. I placed 3-C with 3-A and 3-B and put them in this large lock-sealed envelope.

Q. Now, by "lock-seal" you mean a metallic seal?

A. Yes, sir.

Q. And at the time you did that, was the flap torn open?

A. No, sir.

Q. Now, showing you what has been marked as Government's Exhibit No. 2, containing 2-A through 2-I,—A, B, C, D, E, F, G, H, and I, let me show you first Government's No. 2-A, B, C, D and E, contained in envelope marked Government's Exhibit No. 2 and I will ask you if you will examine the contents of Government's Exhibit 2 containing 2-A, B, C, D and E.

Now, having examined those envelopes, can you identify Government's 2-A, B, C, D and E?

[fol. 180] Yes, sir.

Q. And how can you identify those?

A. By my initials and the number of capsules and the date 3-25-55 and the time, 5:30 a.m.

Q. What do you identify Government's 2-A, B, C, D and E to be?

A. They were the envelopes in which I placed the heroin that was found in—that contained the original—

Mr. Harris: Your Honor, I have to object to his characterization of it as heroin. There is no testimony that what he has there is heroin.

The Court: Well, refer to it as a narcotic drug, then.

Mr. Stevas: Suspected narcotic drug.

The Court: Yes; suspected narcotic drug.

The Witness: Yes; I transferred the suspected narcotic drug from—

By Mr. Stevas:

Q. Where was this suspected narcotic drug obtained from?

A. The furnace room of 1337 Columbia Road, Northwest.

Q. In the basement?

A. Yes, sir.

[fol. 181] Q. And did you have occasion to count the number of capsules of suspected narcotic drug?

A. Yes, sir.

Q. And at the time you obtained them from the furnace room how many capsules were there at that time?

A. 381.

Q. 381.

A. Yes, sir.

Q. And what were those capsules that you recovered in?

A. In an envelope like this (indicating)—similar to this.

Q. Similar to Government's Exhibit 2-A, B, C, D and E; similar to those envelopes?

A. Yes, sir.

Q. And how many envelopes were they in at the time you recovered them, with respect to the small manila envelopes?

A. Five.

Q. And showing you what has been marked as Government's No. 2-I for identification, I will ask you to look at those envelopes, if you will.

Having looked at those envelopes, I will ask you if you can identify Government's 2-I?

A. Yes, sir.

[fol. 182] Q. And what do you identify Government's 2-I to be?

A. I identify them to be the envelopes which contained—originally contained the suspected narcotic drugs.

Q. Which are now contained in Government's Exhibits 2-A through 2-E?

A. Yes, sir.

Q. And you took them out of Government's 2-I?

A. Yes, sir.

Q. And transferred them into Government's 2-A through 2-E?

A. Yes, sir.

Q. What, if anything, did you then do with Government's 2-I?

A. I took them to the Single Fingerprint Section of the Federal Bureau of Investigation for development of latent fingerprint impressions.

Q. Now, at the time you first recovered Government's 2-I, were they the same color as they appear today?

A. No, sir.

Q. What color were they at the time you obtained them?

A. Buff-colored manila cream.

[fol. 183] Q. Similar to Government's 2-A through 2-E?

A. Yes, sir.

Q. Now, let me show you what has previously been marked as Government's 2-F for identification, and ask you to look at that.

Can you identify Government's 2-F?

A. Yes, sir.

Q. And how can you identify Government's 2-F?

A. By my initials and the date and the time "5:30" a.m. on one of the envelopes.

Q. And what do you identify, Government's No. 2-F to be?

A. The empty manila envelopes that were found with the narcotics that were secreted—the suspected narcotic drugs that were secreted in the basement of 1337 Columbia Road, Northwest.

Q. When you speak of the basement, you are speaking of the furnace room at this time?

A. Yes, sir.

Q. And how many of those envelopes were there at the time you recovered them, if you recall?

A. Forty-nine, I believe.

The Court: What are the five envelopes that you spoke of?

[fol. 184] The Witness: These five envelopes were the ones that contained suspected narcotic drugs and were separate from this package here.

The Court: 381 capsules, what were they in?

The Witness: In these five—

The Court: Then what—as in the smaller envelopes?

The Witness: They were empty, sir.

The Court: I see.

Q. With respect to these five, may the record show that that is Government's 2-I.

A. Yes.

Q. And Government's 2-F, you are speaking of the package of envelopes.

A. Yes.

Q. Were there any suspected narcotics drugs found in those group of 49 envelopes?

A. No, sir.

Q. Let me hand you, then; what has been previously marked as Government's No. 2-G and ask you to look at that, if you will.

Having looked at that, can you identify Government's 2-G?

A. Yes, sir.

[fol. 185] Q. How can you identify it?

A. By my initials, the date 3-25-55 and the time, 5:30 a. m.

Q. And what do you identify Government's 2-G to be?

A. A bag in which the suspected narcotics and the empty manila envelopes were contained.

Q. That is, when you say the suspected narcotics, you mean what was in Government's 2-I and the Government's 2-F, the empty envelopes.

A. Yes, sir.

Q. Now let me hand you what has been marked as Government's 2-H and ask you if you will look at that, please.

Having looked at that, can you identify Government's 2-H?

A. Yes, sir.

Q. And how can you identify that?

A. By my initials, the date 3-25-55 and the time, 5:30 a. m.

Q. And what do you identify Government's 2-H to be?

A. It was the bag in which the previous exhibits were placed.

Q. That is Government's 2-A through, 2-A, B, C, D, E, F, G and I?

A. Yes, sir.

[fol. 186]. Q. And they were all in Government's 2-H at the time you recovered them?

A. Yes, sir.

Q. And by the way, with respect to Government's 2-H and the previous Exhibit 2-G, with respect to the coloring of the envelopes, were they that particular color at the time you first obtained them in this basement?

A. No, sir.

Q. Or furnace room?

A. No, sir.

Q. And what color was Government's 2-G?

A. It was white with blue printed advertising on it.

Q. What was the advertising at that time? Does it still show on the bag?

A. Yes, sir.

Q. It still shows on the bag, so the evidence will speak for itself.

What about Government's 2-H, the coloring of that bag?

A. It was also forwarded to the Federal Bureau of Investigation for examination.

Q. And was the coloring of the bag changed then?

A. Yes, sir.

The Court: The Court has to stop here, counsel. We will adjourn until 1:45.

[fol. 187] (Thereupon, at 12:15 o'clock p. m., a recess was taken until 1:45 o'clock p. m., of the same day.)

[fol. 188]

AFTER RECESS

(The Court resumed at 1:45 o'clock p. m., pursuant to recess.)

Thereupon,

FRED E. WILSON, the witness at adjournment, resumed the stand and further was examined and testified as follows:

Direct examination. (Resumed)

By Mr. Stevas:

Q. Now, Agent Wilson, directing your attention again to Government's Exhibit No. 1, what do you define Government's Exhibit No. 1 to be?

A. The evidence that I delivered to the United States Chemist, Dr. Young.

Q. Where was Government's No. 1 recovered from?

A. Under the front seat of the taxicab.

Q. With respect to Government's Exhibit No. 1, when you had it there at the scene, were there any tax stamps as prescribed by law affixed to Government's Exhibit No. 1?

A. No, sir.

Q. Now, directing your attention to Government's No. 2-A, B, C, D and E, Government's 2-A, B, C, D and E are what, Officer Wilson?

[fol. 189] A. They are the envelopes which originally contained suspected narcotic drugs that were found in the furnace room at 1337 Columbia Road.

Q. And that was how many capsules?

A. 381.

Q. At the time of the recovery of the 381 capsules in Government's Exhibit 2, were there any Government tax stamps affixed thereto as required by law?

A. No, sir.

Q. What, if anything, did you do, then, with Government's Exhibit 2-A, B, C, D and E, the 381 capsules?

A. On March 28, 1955, I delivered them to the United States Chemist, Dr. Young.

Q. Before delivering those to the Chemist, when you got back to your office, did you do anything with those?

A. Yes, sir. I performed a preliminary field test on them.

Q. When was that performed?

A. March 25th.

Q. That was the morning of the seizure?

A. Yes, sir.

Q. And from the 25th until the 28th, where did Government's Exhibits 2-A through E—where was that maintained?

[fol. 190] A. In my safe at the Office of the Bureau of Narcotics.

Q. And did there come a time before delivering those to the Chemist—

I trust this isn't repetitions. I don't think I covered this this morning—I have forgotten, Your Honor.

Before delivering those to the Chemist, did you do anything with Government's Exhibit 2-A through 2-E?

A. I don't understand your question, Mr. Sevas.

Q. Well, what were they in when you delivered them to the Chemist?

A. This brown manila envelope, and further contained in this lock-sealed envelope.

Q. The large envelope?

A. Yes, sir.

Q. And did you put them in the lock-sealed envelope?

A. Yes, sir.

Q. And was it sealed when you gave it to the United States Chemist?

A. Yes, sir.

Q. And can that envelope be opened without breaking that seal, without cutting the envelope?

A. No, sir.

Q. And you personally delivered it to the Chemist?
[fol. 191] A. Yes, sir.

Q. Now, did you have any conversation with the defendant Miller, William Miller, with respect to the marked one hundred dollars?

A. Yes, sir.

Q. Tell us if you will what, if any, conversation you had with him?

A. He emphatically denied that that hundred dollars marked money was his or had been in the house, and said that we were putting it in with the money that we had taken out, that had been taken from Mrs. Byrd and from between the sheets of the bed, and insisted that we were planting money in the place.

Q. Did you plant the money in the place?

A. No, sir.

Q. And was there any statement made by the defendant Bessie Byrd during the course of this time you were in the premises?

A. Not that I can recall.

Q. How many bedrooms were in this Apartment 1-A?

A. Just one, sir.

Q. How many rooms did the apartment consist of?

A. Two rooms and a bath.

Q. And of the two rooms one of those was a bedroom?
[fol. 192] A. Yes, sir.

Q. And what was the other room?

A. A kitchen.

Mr. Stevas: Now, if Your Honor please, at this time I would like to have this witness step down to the blackboard so that he can draw a diagram thereon.

The Court: Very well.

Mr. Stevas: May the blackboard be moved closer this way?

The Court: Yes, sir.

(Blackboard was moved closer to jury box.)

By Mr. Stevas:

Q. Now, Agent Wilson, at this time I would like you, for the benefit of the jury, to draw upon this blackboard a rough diagram of the floor plan of the premises there on Columbia Road which you described as this Apartment 1-A, and the furnace room, and while you are drawing the diagram please do not say anything until you have completed the drawing.

(Witness places diagram on blackboard.)

By Mr. Stevas:

Q. Now, this is a rough diagram, Agent Wilson, of the basement floor of these premises.

A. Yes, sir.

[fol. 193] Q. Now, at the bottom of the diagram you have a couple of horizontal lines. What does that designate?

A. This would be Columbia Road and this would be the sidewalk, and the space in between would be the distance from the sidewalk to the house.

Q. On this particular diagram, will you indicate by the number "1" the door leading into the apartment?

Will you affix a number "1" there?

A. To the apartment proper.

Q. To the building itself.

(The witness complied.)

And the little tiny line that you have underneath that numeral "1" represents what?

A. The steps leading into the basement, under a porch that is affixed to the outside.

Q. That is, you go down those steps.

A. Yes, sir.

Q. And then will you point to the long hallway that you have described to the jury in your testimony? Can you point to that for them?

A. Yes, sir. This is the hallway (indicating).

Q. And you say that there are three doors with respect to that hallway. Will you number the other two doors? You have numbered one; will you number the other two, [fol. 194] No. 2 and No. 3?

(The witness complied.)

Now, which is the furnace room?

A. The furnace room is this room right here.

Q. Marked with the initials "F. R."

A. Yes, sir.

Q. And the steps in the furnace room, you say there are steps in there?

A. Yes, sir.

Q. How do you have that marked?

A. By the word "steps" wrote in there.

Q. And with respect to the furnace room, will you mark with an "X" the place where the 381 suspected narcotic capsules were obtained from?

A. They were found under the steps back near the furnace.

Q. And with respect to the furnace room, will you mark a "Y" where the furnace would be?

(The witness complied.)

Now, which is the door to Apartment No. 1-A?

A. No. 3.

Q. That is the entrance into Apartment 1-A.

A. Yes, sir.

Q. Are there any other doors on that long corridor [fol. 195] other than doors 1, 2 and 3?

A. No, sir.

Q. And which is the bedroom?

A. You go directly into the bedroom.

Q. And will you mark the bedroom and add to the "B" the initials "ED?"

(The witness complied.)

And which is the bathroom?

A. This is the bathroom.

Q. And that is marked with the initials "B. R.?"

A. Yes, sir.

Q. What is the other room in that apartment?

A. That is the kitchen.

Q. Is there a door between the bedroom and the kitchen?

A. Yes, sir.

Q. And will you number that No. 4, please?

(The witness complied.)

Then you have the kitchen.

And is there a door leading out of the kitchen?

A. Yes, sir.

Q. Will you number that the next number?

(The witness complied.)

Within the bedroom itself, do you recall where the bed was located?

[fol. 196] A. Yes, sir.

Q. Will you draw an outline of a bed?

(The witness complied.)

Now, was there a chest of drawers in that bedroom that you can recall?

A. Yes, sir.

Q. And where was that located?

(The witness placed a mark on the diagram.)

Will you put the initial "C" in there?

(The witness complied.)

Now, you mentioned a window through which you saw a light go on and then off. Will you mark that place, if it is shown on the diagram, with the letter "W?"

(The witness complied.)

And is there another window in that furnace room?

A. Yes, sir.

Q. Will you mark that with the initial "W" too on that diagram?

(The witness complied.)

Is there a light in that furnace room to your knowledge?

A. Yes, sir.

Q. Where is the lighting fixture itself?

A. It is to the left of the entrance of the door and to the left of the steps.

[fol. 197] Q. Would you draw a circle indicating approximately the rough location of the light?

(The witness complied.)

And do you know where the switch to that light is?

A. Yes, sir.

Q. Where is that located?

A. It is a pull cord attached to the light.

Q. Attached to the light?

A. Yes.

Q. And the steps in the furnace room, do they go down below the furnace room or are those steps leading upstairs?

A. They are steps leading to the upstairs.

Q. From the furnace room?

A. Yes, sir.

Q. And to the right of the long hallway, do you know what is in that space?

A. It is just a wall space, as far as I know.

Q. There are no doors leading into that from that long hallway?

A. No, sir.

Q. And approximately where on this diagram would the tree be that you went to after you had gone down the steps the first time?

[fol. 198] A. It was across Columbia Road (indicating).

Q. That would be on the south side of Columbia Road.

A. Yes, sir.

Q. North is at the top of the diagram; if you are facing it, the top would be north.

A. Yes, sir.

Mr. Stevas: May I have the witness resume the stand at this time.

(The witness resumed the stand.)

By Mr. Stevas:

Q. During the time you were in this Apartment 1-A, did there come a time when you had occasion to go to the dresser?

A. Yes, sir.

Q. Will you tell us what, if anything, you did at that time?

A. I searched the dresser drawers and found a package.

Q. Handing you what has been marked as Government's Exhibits 4-A and 4-B for identification I will ask you to look at those items.

Having looked at them, I will ask you if you can identify those items?

A. Yes, sir, I can identify them.

[fol. 199] A. By my initials, the time they were found, and the date they were found, March 25, 1955.

Q. And what do you identify Government's Exhibit 4-A to be?

A. It is a carton of 1,000 No. 5 empty gelatin capsules.

Q. And what do you identify Government's Exhibit 4-B to be?

A. The bag in which the capsules were contained.

Q. That is, the bag in which Government's Exhibit 4-A, the empty gelatin capsules, were contained?

A. Yes, sir.

Q. Where did you recover Government's Exhibits 4-A and 4-B from?

A. From the middle of the middle dresser drawer in the bedroom.

Q. And is that the space marked on this diagram with the letters "Chest?"

A. No, sir; the dresser was down the wall about four or five feet from that particular piece of furniture.

Q. Further up on the diagram?

A. Yes, sir.

Q. Will you tell me where to stop?

A. Right about there, sir (indicating).

[fol. 200] Q. Where I have placed the initial "C"?

A. Yes, sir.

Q. Have you had occasion to open the package marked as Exhibit 4-A up until this time?

A. No, sir.

Q. At this time I will ask you to open that package.

(Witness breaks paper wrapping from package and opens package.)

Having opened that I will ask you to examine the contents of Government's Exhibit 4-A.

Now, Agent Wilson, visually how do the contents of Government's Exhibit 4-A compare with the capsules that you found in Government's Exhibit 1, the 100 capsules that you obtained from the taxicab?

A. They are the same size capsule.

Q. Are they similar in appearance?

A. Yes.

Q. And how does Government's Exhibit 4-A compare with the capsules that you found under the steps in the furnace room?

A. They are the same size, No. 5 capsule.

Q. Same capsule in appearance?

A. Yes, sir.

Q. With respect to Government's 4-B, the white paper [fol. 201] bag, how does that compare with Government's Exhibit 2-G, the white paper bag found with the 381 capsules under the steps in the furnace room?

A. They are identical bags in color and advertising.

Q. Now, would you close the capsule box up again, please?

Now, I hand you what had been previously marked as Government's Exhibit No. 5 and I will ask you to examine that:

Can you identify Government's Exhibit No. 5?

A. Yes, sir.

Q. And how can you identify it?

A. By my initials, the time it was found and the date, March 25, 1955.

Q. Were you present when that was found or recovered?

A. I was in the adjoining room.

Q. And who had it when you first saw it?

A. Officer Wurms.

Q. And did he give that to you?

A. Yes, sir.

Q. What, if anything, did you do with it?

A. I took it back to the office and kept it with the other evidence.

Q. What do you identify Government's Exhibit 5 to be? [fol. 202] A. I identify it as a box formerly containing 1,000—manufactured to contain 1,000 No. 5 empty gelatin capsules.

Q. How does that compare with Government's Exhibit 4 A?

A. It is identical in color and advertising.

Q. With a similar description on it?

A. Yes, sir.

Q. Similar in size and appearance?

A. Yes, sir.

Q. Now let me show you what has been marked as Government's Exhibit No. 6 for identification and ask you to look at that, if you will.

Having looked at that, can you identify that?

A. Yes, sir.

Q. And how can you identify that?

A. I can identify it by my initials, the date March 25, 1955, and the time that it was found.

Q. Did you find that or recover that?

A. No, sir, Officer Wurms found it.

A. And when did you first see it?

A. Immediately after he found it, he gave it to me.

Q. Did you see where he got it from?

A. No, sir.

[fol. 203] Q. Officer Wurms is out in the witness room, is he?

A. Yes, sir.

Q. What do you identify that to be?

A. I identify it to be a small brown manila coin envelope.

Q. Did you have occasion to do anything with Government's Exhibit 6?

A. Yes, sir.

Q. What if anything did you do with that?

A. I submitted it to the Questioned Documents Section of the Federal Bureau of Investigation.

Q. And directing your attention to Government's Ex-

hibit 1-A, do you recall what Government's Exhibit 1-A contained originally?

A. Yes, sir.

Q. What did that originally contain?

A. That originally contained the suspected narcotic drugs that was found under the front seat of the taxicab.

Q. And with respect to Government's Exhibit 2-F, which I believe you identified to be the envelopes found in the furnace room together with the narcotics, and together with Government's 2-I—and what is Government's 2-I, again?

A. They were the original containers of the suspected [fol. 204] narcotics that were found in the furnace room.

Q. That is the 381 capsules?

A. Yes, sir.

Q. Now, with respect to those exhibits, that is, Government's Exhibit 1-A, the single envelope, Government's Exhibit 2-F, the bundle of envelopes, and Government's Exhibit 2-I, the five envelopes that you say the 381 capsules were in, together with Government's Exhibit No. 6, which is the one turned over to you by Officer Wurms—

A. Yes, sir.

Q. —did you have occasion to do anything with all of those exhibits I have just enumerated?

A. Yes, sir.

Q. And what was that that you did with those?

A. They were submitted to the Questioned Documents Section of the Federal Bureau of Investigation for examination.

Q. Any particular person that you saw there when you submitted those?

A. Special Agent James Cadigan.

Q. Did you receive those back, then, from Agent Cadigan before trial?

A. Yes, sir.

Q. This morning when you were on the stand I understood you to testify that a good many of these exhibits had [fol. 205] changed color from the time you first had them, you had sent them to the F. B. I. Single Fingerprints Section for analysis?

A. Yes, sir.

Q. And the chemicals applied to change the color—is that correct?

A. Yes, sir.

Q. Were there any identifiable prints found on these items that were submitted?

A. None of value in this case.

Mr. Stevas: I have no further questions of this witness.

Cross-examination.

By Mr. Williams:

Q. Officer Wilson, on March 25, 1955, how long had you known Clifford Reed?

A. To the best of my recollection, it was in October of 1954 that I met Clifford Reed.

Q. And at that time was that knowledge in connection with a narcotic violation?

A. I didn't understand you.

Q. At that time is it not a fact that your knowledge of Clifford Reed was in connection with the fact that he had violated the narcotic laws?

[fol. 206] A. I don't believe the reason that I saw him at that time was that he had violated the narcotic laws.

Q. Yes.

A. No, sir, it wasn't because he had violated the narcotics laws that I saw him.

Q. Now, on March 25, you yourself did take Clifford Reed into custody at about 1:35, I think you testified.

A. Yes, sir.

Q. And it was as a result of his having violated the narcotic laws?

A. Yes, sir.

Q. Was he arrested on a warrant at that time?

A. Yes, sir.

Q. And was that for a violation on January 20, 1955?

A. I really couldn't say what the date of the offense was but there had been a United States Commissioner's warrant issued for him, which I had knowledge of.

Q. Now, at the time when you arrested him there at his residence, 1330 Vermont Avenue, did you keep him there at the residence all the time he was in your custody, immediately, or was he carried down to the Narcotics Bureau?

A. He was taken to the Central Cell Block of the Metropolitan Police Department shortly after his arrest.

Q. Could you tell us about what time it was he was carried [fol. 207] down there?

A. I think around 2 o'clock, to the best of my recollection.

Q. Was he booked at that time, that night?

Mr. Stevas: I object to this as being immaterial to this case.

The Court: I don't see the materiality.

By Mr. Williams:

Q. There came a time, Officer, when Clifford Reed was subsequently taken from the cell block, did there not; that night?

A. No, sir.

Q. Then do I understand you, Officer, to say that once he went in the cell block at about 2 o'clock, he was never taken out of that cell block by yourself or any other officers that night?

A. Yes, sir, we took him to the cell block but we never booked—we did not take him into the block proper. In other words, we didn't go through the process of booking him at that time.

Q. Now, on March 25, 1955, at the time when you arrested Clifford Reed, you knew at that time that he was addicted to the use of narcotics, did you not, sir?

Mr. Stevas: Of course this is immaterial. I have no objection—

[fol. 208] The Court: He may answer.

You may answer the question.

The Witness: Yes, sir, I had heard that he was.

By Mr. Williams:

Q. Was then your whole information that you knew about Clifford Reed at that point hearsay?

Mr. Stevas: You mean about his addiction, for the record?

The Court: That is what I assume you mean, about his addiction to drugs.

The Witness: Yes, sir, that was hearsay.

By Mr. Williams:

Q. Prior to March 25, 1955, when was the last time you had contacted or been in contact with Clifford Reed?

A. I can't tell you the day but I can tell you the circumstances.

Q. You did have knowledge on March 25, 1955, that Clifford Reed had received treatment for narcotic addiction prior to that time, did you not?

A. I don't believe so.

Q. Well, would it be fair to say, Officer, that the information which you had about Clifford Reed on March 25 was that he was addicted to the use of narcotics?

A. Yes, sir.

[fol. 209] Q. Now, were you alone or were there other officers with you at the time that you arrested Clifford Reed at 1:35 on the night of March 25th?

A. There were other officers with me.

Q. And I think you testified further, Officer, that you did have a conversation with Clifford Reed at 1330 Vermont Avenue on the night of his arrest?

A. Yes, sir, I did.

Q. And was it from 1335 Vermont Avenue, Northwest, that you made the call to Arthur Lewis?

A. No.

Q. Would you tell us where you were when you made that call?

A. Yes, sir, I was at the Metropolitan Police Department.

Q. After that telephone call was made, is it a fact that Clifford Reed subsequently did act in conjunction with Agent Lewis by your direction?

A. Yes, sir.

Q. Now, prior to March 25, 1955, had you had occasion to go into the premises at 1337 Columbia Road?

A. No, sir.

The Court: Will you pardon me just a moment?

(Thereupon the Court briefly proceeded with other business.)

[fol. 210] The Court: You may proceed now, counsel.

Mr. Williams: Thank you, Your Honor.

By Mr. Williams:

Q. Officer, in connection with your instructions to Officer Lewis with regards to the one hundred dollars which you gave him, was he instructed to make a purchase of narcotics with this money?

A. He was instructed to put the money on the proposed defendant, to give the money to the proposed defendant.

Q. And who was that?

A. Arthur Shepherd.

Q. Now, the fact is, Officer, that the information which you got from Clifford Reed was to the effect that he could cause or effectuate a purchase of narcotics from Arthur Shepherd, was it not?

A. Yes, sir.

Q. And that was the reason why he wasn't booked when he was carried to the cell block, and subsequently that he was carried to 6th and New York Avenue and then to 7th and M, and to 617 M Street, and around about, was it not?

A. Yes, sir.

Q. Now, at the time when you rode up to 13th and Columbia Road, Officer, do you recall who was in the automobile [Vol. 211] with you?

A. Yes, sir.

Q. Would you tell us who it was?

A. Officer Wurms and Officer Bowman.

Q. The three of you?

A. Yes, sir.

Q. Could you tell us where you got out of that cab—I mean, your automobile—when you say you got out up there on one occasion?

A. 13th and Fair—13th and Columbia Road Northwest.

Q. Did you get out on the corner?

A. At the intersection, while the car was making a turn in the intersection.

Q. And which way did your car turn?

A. The car turned north on 13th Street.

Q. North?

A. Yes, sir, on 13th Street.

Q. I don't know if I understand you, sir. 13th Street runs north and south?

A. Yes, sir.

Q. And when you got to Columbia Road, 13th and Columbia Road, your car made a turn?

A. We were coming—we were traveling west on Columbia [fol. 212] Road and the car was turned north on 13th.

Q. Is it a fact that Columbia Road is one-way from east to west?

A. Yes.

Q. But your car was traveling—

A. Traveling east on Columbia Road.

Q. East on Columbia Road?

A. Yes, sir. Traveling—

Excuse me, sir, traveling west on Columbia Road and it turned north on 13th Street.

Q. Then you were going the wrong direction in a one-way street?

Mr. Stevas: I object to that. He says it is one-way going from east to west and he was going east to west on Columbia Road.

Mr. Williams: I understand him to say he was going west, Your Honor, on Columbia Road.

The Court: No, he says he was going east—east to west. East to west?

The Witness: Yes, sir.

The Court: Yes, that is what he said.

By Mr. Williams:

Q. Then you turned—could you tell us where you first got on Columbia Road?

[fol. 213]. A. At Michigan Avenue.

Q. Now, how did you get from the corner up to 1337?

A. I travelled at a pretty—I didn't run, but I walked at a fast pace.

Q. About where was the taxicab parked at that time which you were following?

A. It was parked several houses above, 1337; it was parked toward 14th Street.

Q. Beyond 1337?

A. Beyond 1337.

Q. Now, did you follow the cab, Officer, all the time from the time when Clifford Reed and Officer Lewis left the cab at 13th and Vermont Avenue?

A. Yes, sir.

Q. Did the cab go directly up to 1337 Columbia Road?

A. No, sir.

Q. Did it stop anywhere?

A. Yes, sir.

Q. Where did it stop first?

A. 13th and Q Streets, Northwest.

Q. And what happened there?

[fol. 214] A. A soldier and an unidentified man and woman got into the cab.

Q. Where did the cab go then?

A. It then went to 7th Street and Rhode Island Avenue Northwest where the man and woman were let out of the cab.

Q. And then where did the cab go?

A. It went to the unit block of L Street Northwest where the soldier left the cab.

Q. And how far away from the cab were you at this time?

A. Three—it varied at different times. One car would be behind the cab and then the other car would be behind the cab, but we always had the cab in sight.

Q. Were both cars following the cab at that time?

A. Yes, sir.

Q. At all times?

A. Yes, sir.

Q. And then when the car left the unit block of L Street, Northwest, did it go directly up to Columbia Road?

A. Yes, sir.

Q. And do you know about what route it took up from the unit block of L Street to Columbia Road?

A. Yes, sir.

[fol. 215] Q. What route was that?

A. North Capitol Street to Michigan Avenue, and Michigan Avenue intersection Columbia Road; and it followed Columbia Road directly to the 1300 block.

Q. Now, was there anyone else in the cab after the cab left the unit block of L Street until it got up to the 1300 block of Columbia Road, besides the driver and Arthur Shepherd?

A. No, sir.

Q. Now, between the time that Arthur Lewis and Clifford

Reed left the cab and the time when the cab was stopped by yourself and other Officers at 13th and Fairmont, was the cab stopped and searched at any time?

A. Prior—

Q. Prior to that?

A. No, sir.

Q. Now, calling your attention, Officer, to the testimony that when the cab was stopped at 13th and Fairmont Streets, Northwest, who was the first Officer to the cab?

A. I believe that I was.

Q. And the first thing you did when you walked up to the cab was to place the defendant Arthur Shepherd under arrest, was it not?

[fol. 216] A. Yes, sir.

Q. Now, at that time, did you have any evidence of any violation of the law?

A. No, sir.

Q. And it was subsequently, that is, subsequent to the arrest, that you searched the cab?

A. Yes, sir.

Q. And you say you found, I think, Government's Exhibit 1-A, the envelope containing—or No. 1, the envelope containing 100 capsules under the front seat of the taxicab?

A. Yes, sir.

Q. Now, would you tell us, Officer, whether or not it is the fact that the envelope you say you found there was found under the driver's seat of the taxicab?

A. Officer Wurms will have to tell you where it was found, Mr. Williams. I didn't pick it up.

Q. You didn't find it personally, yourself?

A. No, sir.

Q. Now, about how long would you say, Officer, that you were there at 13th and Fairmont Streets, Northwest, at the time you placed Arthur Shepherd under arrest?

A. About five minutes.

Q. Could you tell us about what time it was at that time?

[fol. 217] A. About 3:45.

Q. Now, directing your attention, Officer, to the premises at 1337 Columbia Road, the return trip you made there after Arthur Shepherd had been taken into custody, who was the first Officer to enter the premises?

A. I believe that I was.

Mr. Stevas: Excuse me.

If Your Honor please, for the record, by "enter the premises" do you mean the apartment proper or the building?

Mr. Williams: The building itself.

The Witness: I believe that I was.

By Mr. Williams:

Q. And did you enter the basement entrance?

A. Yes, sir.

Q. Now, were there other Officers along with you?

A. Yes, sir.

Q. And did they enter with you at the same time?

A. Agent Pappas and Officer Bowman, I believe, followed me into the building, but they remained at the entrance at which you would go into the building as opposed to being in the hallway proper.

Q. Now, directing your attention to the diagram on the blackboard, it is a fact that the first part of the inner part [fol. 218] of the premises which you entered was the furnace room, was it not?

A. That I entered?

Q. Yes.

A. No, sir.

Q. Well, isn't it a fact that other Officers present did enter the furnace room first, prior to entering into the apartment proper?

A. Yes, sir, that is what I understand.

Q. Well, now, it is a fact that Agent Wurms entered the upstairs part of the premises, was it not, or did he not?

Mr. Stevas: Your Honor, I am going to object because he wouldn't know what Agent Wurms did unless he was with him, and Officer Wurms is here to testify anyhow.

The Court: He is asking him if it is a fact. If he doesn't know, he can so state.

The Witness: It is a fact.

Mr. Williams: Thank you.

By Mr. Williams:

Q. Now, do you know how he got down to where you were?

A. I know what he told me.

Q. Did there come a time when you went in the furnace [fol. 219] room yourself?

A. Yes, sir.

Q. And I think you testified that there were some steps there by the furnace, in the furnace room?

A. Yes, sir.

Q. And did you notice where those steps led to or led from?

A. They led to the upstairs.

Q. And did you have an occasion to follow those steps upstairs?

A. Yes, sir. I believe I went out that way one time.

Q. And it is a fact that those steps led from the furnace room upstairs and around to a common hallway, is it not?

A. That is correct.

Q. And did you have an occasion to ascertain how many families lived in this building?

A. No, sir.

Q. Did you have an occasion to observe that more than one family did live there?

A. I have never seen anybody else in that building.

Q. Did you notice the mail boxes?

A. I believe that—I don't believe there are any names [fol. 220] on those mail boxes, to my recollection.

Q. Did you ascertain who owned the building?

A. Not definitely.

Q. But you did make some inquiries about the building?

A. Yes, sir.

Q. And did those inquiries develop that more than one family lived there?

A. I didn't make any inquiries along that line.

Mr. Stevas: Just a moment.

This is hearsay, and I have no objection to it, but if he goes into it I am going into what else he developed.

Mr. Williams: I don't know what is in Mr. Stevas' mind, Your Honor, so certainly the question I am asking is as a result of the Officers' investigation.

The Court: Whether what?

What do you want to find out?

Mr. Williams: My question was whether or not his investigations developed that other families lived in the dwelling.

The Court: In the building?

Mr. Williams: Yes, in the building.

The Court: Not in the basement premises?

Mr. Williams: No, sir, I meant in the whole building, Your Honor.

[fol. 221] The Court: You mean not in the basement premises?

Mr. Williams: No, sir.

The Court: You may answer the question.

The Witness: Would you repeat the question, please?

The Court: Well, whether your information developed that any other families lived in other parts of the building?

The Witness: No, sir.

By Mr. Williams:

Q. You didn't ascertain that?

A. No, sir.

Q. It is a fact that this is about a three or four-story building there, is it not?

A. I believe it is a two-story building, not counting the basement; three stories, if you counted the basement.

Q. Now, about how long were you in the premises, Officer, there at 1337 Columbia Road?

A. About two hours 45 minutes.

Q. And could you tell us what you were doing during this time that you spent in the premises?

A. Most of the time I was going through the money that Mr. Miller and Mrs. Byrd had, trying to find marked money.

Q. Now, it is a fact that you went into the furnace room [fol. 222] prior to the time when you went in the apartment, is it not?

A. It is not.

Q. Did any of the Officers go in the furnace room prior to the time that you went into the apartment?

A. As I say, I understand that Mr. Wurms went through there.

Q. This was before you went into the apartment?

A. Before we went into Mr. Miller's apartment, yes, sir.

Q. Could you tell us about how long a period of time elapsed until you had gone into Mr. Miller's apartment?

That is, how much time did you spend in the furnace room or did any of the officers spend in the furnace room before they went into the apartment?

A. As I told you before, Mr. Williams, I don't know that Wurms actually went through that furnace room, except what has been developed, but Wurms and I were on the outside of the building trying to find if there were any other entrances into the building other than 1337. We were examining the windows that faced Columbia Road.

Now, I went into the basement and I stood by the door with my face to the wall and my ear to the door trying to hear if I could hear anybody moving around in that apartment [fol. 223], and the next thing I knew Officer Wurms was beside me.

Now, where he came from I don't know.

Q. Were you listening at that time at the furnace room door or the apartment door?

A. The apartment door.

Q. Now, could you give us some estimation as to distance; about how far is the apartment door from the furnace room door?

A. About six or seven feet, I would say.

Q. Now, you examined the apartment after you got in there thoroughly, did you not?

A. Yes, sir.

Q. And did you find that there was any connecting door or entrance to the furnace room from the apartment?

A. No, sir.

Q. And is it a fact that the furnace room door was locked from the basement when you got in there, the basement hallway; did you not?

A. It was open when I went in. I had no part of opening the furnace room door.

Q. No, I mean when you went in to listen, as you testified to, at the apartment door—when you passed by the furnace room door was it open or closed?

[fol. 224] A. Closed.

Q. Was it locked?

A. I didn't try the door.

Q. You didn't try it.

Did you later have an occasion to examine the lock on the door?

A. Yes, sir.

Q. The furnace room door?

A. Yes, sir.

Q. And was it in working order; would it lock?

A. Yes, sir.

Q. While you were in the apartment there, you found some keys which you fitted in that lock, did you not?

A. Yes, sir.

Q. And did any of them work?

A. No, sir.

Q. Did you question Mr. Miller as to whether or not he had access to the furnace room or not?

A. Yes, sir.

Q. And what did he tell you?

A. He told me that he didn't.

Q. Did you question Miss Byrd as to whether or not she had access to the furnace room?

A. I don't believe that I did. I can't recall talking at [fol. 225] all to Mrs. Byrd except maybe more than just a passing remark.

The Court: We will take a ten minute recess.

(Short recess taken.)

By Mr. Williams:

Q. Now, Officer Wilson, how long would you say that Clifford Reed was kept at the No. 1 cell block before he was carried to 6th and New York Avenue Northwest?

A. Not more than five minutes.

Q. Well, during the time when he was there at Headquarters did you have any conversation with him?

A. Yes, sir.

Q. And was that conversation regarding what he was to do later on that evening?

A. Yes, sir.

Q. Now, I think you testified earlier that your activity on that evening as it relates to the defendants here, was

based on information which you got from Clifford Reed?

A. Yes, sir.

Q. And further that you regarded that information as reliable information?

A. Yes, sir.

Q. Could you tell us, Officer, at the time when you went [fol. 226] up to 1337 Columbia Road, whether or not you had a search warrant?

A. No, sir, I did not.

Mr. Stevas: Now, that is immaterial to this case, Your Honor. That motion was argued and denied.

The Court: Yes, I sustain the objection.

Mr. Harris: Your Honor, may we approach the bench on this matter?

The Court: Yes.

(Thereupon counsel for the parties approached the bench and in a low tone of voice conferred with the Court as follows:

Mr. Harris: Even though the motion was denied, Your Honor, we renew our motion and I think for the sake of the record we have to preserve it.

The Court: You don't want to be renewing it so often. It is not necessary. You did make it once and you preserved your record and we should not take the time to keep on renewing that motion. That issue is immaterial during this trial. The jury shouldn't have that before it at all. It just confuses them.

Mr. Harris: I was under the impression, Your Honor, under the Villa Roma case we had to continue to make [fol. 227] the objection.

The Court: I will consider for the record that your record is amply protected as far as the renewal of the motion is concerned for the suppression of the evidence, and you needn't be concerned about that.

Mr. Harris: Thank you, Your Honor.

(Thereupon counsel resumed their places at the trial table.)

By Mr. Williams:

Q. Now, Agent Wilson, I think you said that Clifford Reed was taken into custody about 1:35 as a result of an outstanding warrant?

A. Yes, sir.

Q. Could you tell us when he was first booked?

Mr. Stevas: I object to that as being immaterial, Your Honor.

The Court: Well, he may answer the question.

The Witness: It was about five or six o'clock, I guess, six o'clock that morning.

By Mr. Williams:

Q. The next morning?

A. Yes, sir; it was around that time.

Q. Was that the morning of the 26th, or the 25th?

[fol. 228] A. The 25th, sir.

Q. And could you tell us when he was carried before the Commissioner?

Mr. Stevas: I object.

The Court: I don't think that is material; I sustain the objection.

By Mr. Williams:

Q. Now, directing your attention, Officer, to that part of your testimony in which you said that a portion of the money which was turned over later to Officer Lewis by yourself, how much of the money was money of your own?

A. None.

Q. Well, now, I think you testified, sir, that a part of the funds were received from Agent Pappas?

A. That's right, sir.

Q. How much money did you get from Agent Pappas?

A. I don't know how much I got from Agent Pappas but he returned to the office to get the money from his safe to make up what I had in official advance funds which I carried most of the time.

Q. Well, do you know how much you had?

A. I believe it was around \$65 or \$70; I am not sure.

Q. Now, could you tell us where you were when you

[fol. 229] made up the list upon which was listed the serial number of the money used in the transaction?

A. At 6th Street and New York Avenue Northwest.

Q. Were you in your automobile, or were you outside the car?

A. I was in the automobile.

Q. Was that the automobile in which you were driving?

A. Yes, sir.

Q. Could you tell us who was in the car with you?

A. Clifford Reed, Officer Bowman, Ivan Wurms, joined later by Officer Pappas, and Arthur Lewis.

Q. You were all in the automobile?

A. They were, I think, in and out of the automobile. We were all there at 6th Street and New York Avenue.

Q. Now, could you tell us, Officer, about how long part of you gentlemen were there at 6th and New York Avenue before Officer Lewis and Clifford Reed left you?

A. About 15—I was there maybe 20 minutes; the rest of the boys were there about 15 minutes; Agent Pappas and Officer Thompson joined us later.

Q. Was Clifford Reed brought directly from No. 1 cell block down to 6th and New York Avenue by yourself?

A. Yes, sir.

[fol. 230] Q. In the car with you?

A. Yes, sir.

Q. Was he searched there at 6th and New York Avenue?

A. Yes, sir.

Q. By whom?

A. By myself.

Q. I think you said he had no money on him.

A. After I searched him, I think I took several dollars of his money away from him. He had no money when I finished searching him.

Q. Did he have anything else in his pocket?

A. No, sir.

Q. Did he take his trousers off?

A. No, sir.

Q. Shoes off?

A. No, sir.

Q. Shirt?

A. No, sir.

Q. How was he searched, Officer?

A. A normal police search, by feeling his pockets, going through them, patting him down and turning his pockets wrong side out.

Q. Do you know whether or not at the time that Clifford Reed was taken into custody at 1:35, Officer, he was under [fol. 231] the influence of narcotics?

A. Do I know; is that the question?

Q. Yes, sir.

A. I don't know personally whether he was under the influence or not.

Q. Did he tell you he was?

A. No, sir, he didn't tell me.

Mr. Stevas: Just a moment. I object to what Clifford Reed told him unless he lets me go into everything that Clifford Reed told me.

The Court: The answer is in. It may stand. He said no, he didn't.

By Mr. Williams:

Q. Now, Officer, directing your attention to the premises there at 1337 Columbia Road, I think you testified that you listened there at the apartment door for a while. Did you hear any sign of life or anybody inside the apartment?

A. No, sir.

Q. And later you say you were joined by Officer Wurms?

A. Yes, sir.

Q. Who knocked on the door?

A. Wurms.

[fol. 232] Q. And I think you said he spoke in a very low voice?

A. Yes, sir.

Q. Do you know why he spoke in a low voice?

A. No, sir.

Q. Now, could you tell us as nearly as you can remember everything he said, if he said anything?

Mr. Stevas: For the record, everything who said, and where?

The Court: Yes; who do you mean, counsel?

Mr. Williams: If Your Honor please, the last—

The Court: Just say who you mean; just say who you mean.

Mr. Williams: Officer Wurms, Your Honor.

The Court: All right, that is all we want. We want it definite.

The Witness: Officer Wurms knocked on the door. He says, "Blue, open the door, police."

There was a voice inside that says, "Who's there?"

And Wurms again knocked on the door and says, "Blue, open the door, police."

By Mr. Williams:

Q. That was everything Officer Wurms or yourself said? [fol: 233] A. Until the door was opened, yes.

Q. Now, when you say "until the door was opened," it is a fact that the door was not opened except by yourself and Officer Wurms, is it not?

A. No, sir, it is not.

Q. Well, I think you testified that there was a chain on the door which was forced by yourself and Officer Wurms; didn't you testify to that?

The Court: He didn't so testify.

I don't remember him saying anything about a chain being forced.

By Mr. Williams:

Q. How was your entrance effected into the apartment, Officer?

A. Until Miller had opened the door and looked out of the door and then refused to let us into the place, the door was forced open then.

Q. Was there a chain on the door?

A. Not to my recollection.

Q. Did you ever, or did Officer Wurms ever state the purpose for which you wanted to enter the premises?

A. I don't understand the question, Mr. Williams.

Q. Did you or Officer Wurms ever tell Mr. Miller why you wanted to come into his apartment?

[fol: 234] A. I believe after we were in there we told him that we wanted to look for the money.

Q. After you were in?

A. Yes, sir.

Q. Now, did you carry on the principal conversation with Mr. Miller, or did Officer Wurms carry it on?

A. I did.

Q. And could you recall the first thing you said to him when you were inside the apartment?

A. I says, "Look who's here, Blue, you are under arrest."

Q. At that time you had made no search of the premises either there, had you?

A. No, sir.

Q. Is it customary that an officer who arrests—

The Court: It is argumentative. The question is argumentative; counsel.

Mr. Harris: Would you indulge us a moment?

The Court: Yes, but you are taking too much time. I have got to warn you again, counsel, to try to hurry this along. Now, I have been very patient with you but you are taking too much time in consultations here.

Go ahead.

Mr. Harris: Thank you, Your Honor.

[fol. 235] (Defense counsel conferred.)

By Mr. Williams:

Q. Officer, when you entered the hallway of the premises at 1337 Columbia Road, did you notice a fire extinguisher anywhere about?

A. Yes, sir.

Q. Where was it located, sir?

A. Just inside of the basement door.

Q. Was that behind the door or in front of the door?

A. As you enter the areaway, or the hallway leading to Apartment No. 1, it is on the right-hand wall about one-quarter of the way down the wall, fastened to the wall.

Q. And it is a fact that the door swings to the right, does it not?

Mr. Stevas: Now, which door?

I object unless he says which door.

The Court: Which door do you have reference to, counsel?

Mr. Stevas: And the doors are numbered on the diagram, if Your Honor please, for the record.

By Mr. Williams:

Q. On your diagram, Officer Wilson, door No. 1, does it swing to the right or to the left?

[fol. 236] A. I believe it is to the right.

Q. And it is a fact, isn't it, that the fire extinguisher is behind that door?

A. I can't recall that it is exactly behind the door. I think it is just a little bit further down the hall.

Q. Did you find that the door would go back flush against the right wall?

Mr. Stevas: For the record, are you talking about Door No. 1?

The Court: You are still talking about Door No. 1, I assume.

Mr. Williams: Yes, Your Honor.

The Court: To the best of my recollection, the door will go back against the wall.

By Mr. Williams:

Q. Now, how many lights did you notice there in the basement?

Mr. Stevas: I must object until we see which part of the basement. Everything is in the basement here.

The Court: The basement is a large place, counsel. You had better specify.

Mr. Williams: In the hallway.

The Court: All right.

[fol. 237] The Witness: There is one light in the hallway.

By Mr. Williams:

Q. Could you tell us where that is located?

A. I believe it is in about the center of the hallway.

Q. Is it a bright light?

A. Yes, sir.

Q. And how many doors are there at the entrance to the hallway where you have the No. 1 on the diagram, Officer?

A. I don't understand the question.

Q. I asked you if there was more than one door to the entranceway of the basement, there where you have the Figure 1?

A. No, sir.

Q. You didn't find a screen door there?

A. No, sir.

Q. Could you give us an estimation, Officer, of about how many steps down from the top step to the bottom step of the basement there are?

A. I would think about nine.

Q. Would you say that if you stood in the bottom of the basement, on the bottom step, that you could see out into the street?

[fol. 238] A. No, sir.

Q. Now, in examining the furnace room, did you find that you could see out in the street through the window from which you say you saw a reflection or a light?

A. No, sir.

Q. And what was there to prevent it?

A. It is covered with a screen that has a plastic-like coating over it; a lamination on the screen.

Q. And did you notice how many windows were in the basement?

A. Yes, sir.

Mr. Stevas: Now, with respect to the furnace room, for the record, I presume.

Mr. Williams: In the furnace room, yes.

The Witness: Yes, sir.

By Mr. Williams:

Q. How many?

A. Two.

Q. Officer, with regard to the money that you testified was found in the apartment, I think you said \$34.00 of the money was found in a housecoat.

A. It was taken from the housecoat, yes, sir.

Q. And where was the housecoat?

A. Mrs. Byrd had it on.

[fol. 239] Q. And the balance of the money, that is, \$66.00, was found on the bed or in the bed?

A. Yes, sir.

Q. Did you find the money there yourself?

A. No, sir.

Mr. Williams: We have no further questions.

Redirect examination.

By Mr. Stevas:

Q. Agent Wilson, you know, according to examination and cross examination, that Reed was addicted to narcotics; is that right?

A. Yes, sir.

Q. That wasn't the only information you knew about Clifford Reed, was it?

A. No, sir.

Q. Now, on cross examination you stated that Clifford Reed told you that he could effect the purchase of narcotics; is that correct?

A. Yes, sir.

Q. Now, did he tell you how, by what mode of operation this could be accomplished?

A. Yes, sir.

Mr. Stevas: I submit, in view of counsel's question, that he is entitled to tell us what Clifford Reed told him [fol. 240] as to how—

The Court: I doubt if we should go into that, counsel.

Mr. Stevas: All right.

By Mr. Stevas:

Q. You say the taxicab picked up a soldier and two other people after it left Clifford Reed and Mr. Lewis off?

A. Yes, sir.

Q. That was at 13th and Q?

A. Yes, sir.

Q. And in which part of the cab did those people get?

A. The back seat.

Q. Did anyone else ever get into the front seat of that cab from the time it left 13th and Vermont until it got up to Columbia Road?

A. No, sir.

Q. Now, when the cab was finally stopped by Officer Wurms, where was the defendant seated, that is, the defendant Shepherd, seated in the front seat with respect to the driver of the cab and the door on the passenger's side?

A. He was sitting very close to the driver of the cab.

Q. Is that the position he was in at the time you saw him

make the motion which you exhibited to the jury, of [fol. 241] bending over?

A. Yes, sir.

Q. Now, this lock on Door No. 2 leading into the furnace room, which you say you tried to fit some keys into, that you obtained from the defendant Miller—is that correct?

A. Yes, sir.

Mr. Williams: I think, if Your Honor please, to keep the record straight, the Officer didn't testify that he obtained any keys from Mr. Miller. He testified that he got some keys from the apartment.

Mr. Stevas: All right, from the apartment of Mr. Miller. Is that correct?

The Witness: Yes, sir.

By Mr. Stevas:

Q. Did you have occasion to closely examine the lock on the door leading into the furnace room, Door No. 2?

A. Yes, sir.

Q. Describe, if you will, what your examination disclosed for the benefit of the jury.

A. The door jam that leads into the furnace room and Door No. 2, where the lock is inset into the door, it is a Yale-type of lock that is in two parts, and by the door jam being cut away, a very small portion of the door jam [fol. 242] being cut away, an object, a sharp object, a sharp or thin objection, can be taken and placed between the door jam and the door, and the lock opened.

Q. And you say that part where the lock enters in the frame is cut away slightly?

A. Yes, sir.

Q. Were you able to open that door without the use of the key?

A. Yes, sir.

Q. Now, you say you took Clifford Reed from No. 1 precinct to 6th and New York Avenue, and before arriving at 6th and New York Avenue, did you have occasion to stop somewhere en route from No. 1 to 6th and New York Avenue?

A. Yes, sir.

Q. And where was that?

A. In the vicinity of 7th and T, where we met Arthur Lewis.

Q. And before going into the apartment of the defendant Miller, he was at the door; is that correct?

A. Yes, sir.

Q. And the door was cracked open?

A. Yes, sir.

Q. And were you standing there?

[fol. 243] A. Yes, sir.

Q. And you knew the defendant Miller, did you not?

A. Yes, sir.

Q. And before you actually went into the apartment did you identify yourself to the defendant or did anyone else identify themselves to the defendant?

A. Other than by verbally saying that we were the police, I don't believe there was any other identification made?

Mr. Stevas: Thank you.

No further questions.

Recross-examination.

By Mr. Williams:

Q. I would like to ask you this, Officer:

What object did you insert in this door to open it without a key?

A. A pen knife.

Q. And when did you do that?

A. After we had found the narcotics and had examined the door and couldn't find the key. We were wondering how we could get into the thing and we had a knife, or I had a knife, and I put it in there.

Q. Was the lock on at the time?

A. Yes, sir.

[fol. 244] Mr. Williams: No further questions.

The Court: Just one thing to clarify my mind:

You indicated when Shepherd was arrested and taken out of the cab, you had no evidence of law violation against him at the time.

Is that what you said?

The Witness: Yes, sir.

The Court: Well, I mean, is that what your position is, that you had no evidence whatever of any law violation?

A. I was in possession of no evidence at that time, sir.
The Court: You knew money had been turned over to him.

The Witness: Yes, sir, I knew that.

The Court: For the purpose—you knew the purpose for which it had been turned over?

The Witness: Yes, sir, I knew that.

The Court: Well, I just wondered what you meant by saying you had no evidence whatever of any law violation.

Go ahead.

Mr. Stevas: May I add one thing to that.

Redirect examination.

By Mr. Stevas:

Q. You also knew what Clifford Reed had told you with respect to defendant Shepherd, didn't you?

[fol. 245] A. Yes, sir.

Q. And did you know who lived at 1337 Columbia Road before you arrested the defendant Shepherd? Did you know who was in that basement?

A. Yes, sir.

Mr. Stevas: No further questions at this time.

The Court: All right, we will adjourn until 10 o'clock tomorrow morning.

(Thereupon, at 3:25 o'clock p. m., the Court adjourned until 10 o'clock a. m., tomorrow, Thursday, June 23, 1955.)

[fol. 246]

[Title omitted]

Washington, D. C.,
Thursday, June 23, 1955.

The trial in the above-entitled cause was resumed before Honorable Luther W. Youngdahl, United States District Judge, and a jury, at 10:00 o'clock a. m.

APPEARANCES:

Alexander Stevas, Assistant United States Attorney, for the Government.

J. Leon Williams and William Beasley Harris, for the defendants.

[fol. 247]

PROCEEDINGS.

(The Court reconvened at 10:00 o'clock a. m., pursuant to adjournment.)

Thereupon,

FRED E. WILSON, the witness at adjournment, having been previously sworn, resumed the witness stand.

Mr. Stevas: I understand the interrogation was completed of this witness yesterday, Your Honor.

The Court: Oh, yes, we were through with this witness.

Mr. Williams: If Your Honor please, may we approach the bench?

The Court: Yes.

(Thereupon counsel for the parties approached the bench, and out of the hearing of the jury, conferred with the Court as follows:)

Mr. Williams: If Your Honor please, we had ordered the transcript of the record of the motion to suppress at which time certain records which had been asked Officer Wurms and Officer Wilson were particularly pertinent.

The Court: I am not going into the motion to suppress.

Mr. Williams: No, sir, I don't mean that, sir. I mean [fol. 248] in this examination, the direct and the cross, there is certain testimony of particularly Officer Wilson which is pertinent in this case now, and we just got this record this morning. Mrs. Sweeney—

The Court: I don't understand what you mean, certain testimony is pertinent.

The testimony here is offered by the Government. He is not your witness.

Mr. Williams: I understand that, Your Honor, but—

The Court: If you are going to use him as testimony for your side, you can do that in defense.

Mr. Harris: He has the idea of impeaching this witness, I think, Your Honor.

The Court: He didn't say so. If that is what you mean, you should say so.

If you have certain impeaching questions I will permit you to ask them.

Go ahead.

Mr. Williams: Very well, Your Honor.

Further, I should like to ask Your Honor's indulgence for a moment——

The Court: Now, we can't take any more time. This [fol. 249] case has been dragging and taking too long a time, and we have got to get going with it. If we are going to take all this time with all these cases we will never try these criminal cases.

What do you mean, asking my indulgence for a moment? To read the transcript, you mean?

Mr. Williams: I want to just check certain parts of it for a short moment, Your Honor.

The Court: We can't take time during the trial of the case to do that.

Mr. Williams: We ordered the transcript——

Mr. Stevas: Let the record show that this motion was argued way back at the beginning of April. You have had since April to get that transcript.

The Court: Yes.

Mr. Williams: The reason why I don't have this record, it is Mr. Stevas' fault. He knows why I don't have this record, Your Honor.

Mr. Stevas: While we are at the bench I want this in the record:

The next witness I will call is going to be Officer Wurns. I am going to limit this Officer in his testimony to avoid this long delayed tactics of this trial, and I am going to ask Your Honor to limit the cross examination to what [fol. 250] I develop on direct.

The Court: Well, whatever you develop on direct, of course, the cross examination will necessarily be limited to that. That applies not only to him, but that applies to anyone.

Mr. Williams: I certainly object to Mr. Stevas' characterizing the trial of this case as long, drawn-out, delaying tactics, because certainly I think——

The Court: We are not concerned with any personalities here at all. It is just a question of trying to get on with a lawsuit, and there has been considerable delay here, more

A. Well, you have got different accousties in the courtroom than you would have down there.

Mr. Stevas: Just a moment.

I object unless he shows the materiality of this, Your Honor. This goes to the motion.

The Court: He may answer.

Now, this tells what took place, counsel. I see no harm in this.

Mr. Stevas: All right.

The Court: Go ahead.

The Witness: "Blue, police."

By Mr. Harris:

Q. That is all that was said by you, is it not?

A. That is all I said.

The Court: Now, you understand, counsel, we are not trying the issue as to whether an arrest was lawful or not. That is not before the jury in this case. Keep that in mind.

[fol. 275] By Mr. Harris:

Q. Now, at the time that you stated that there was a conversation overheard by you, that is, a statement made by the defendant Shepherd in the presence of the defendant Miller, where were these defendants at this time?

A. They were both together leaving—just about leaving the apartment; at the basement door of their apartment, they were just about leaving. We were taking them out then.

Q. They were both under arrest?

A. They both were, sir, yes, sir.

Q. And were they handcuffed together?

A. I think Blue Miller was handcuffed, if I recall.

Q. You think the defendant Miller was. You don't recall whether—

A. We had them handcuffed together. We had to unhandcuff them.

Q. This was said as you were leaving?

A. Yes, sir.

Q. Would you please pinpoint for us, Officer Wurms, where this statement was made?

Was it in the apartment proper?

A. Yes, sir.

Q. But they were leaving, they were walking as this was being said?

[fol. 276] A. We were about to leave.

Q. Was—would you say you were at the door exiting when this was made?

A. A little back of the door.

Q. A little back of the door?

A. Yes.

Q. How far back of the door would you say, Officer Wurms?

A. I believe there is a dresser right as you come in there; they were just about standing there.

Q. And you and your fellow officers were then getting ready to leave?

A. Yes, sir.

Q. And were there other officers near so that they—

A. I was the closest to them. They might have been five or six feet away from me, but I was right alongside of Shepherd and Miller.

Q. And who was the closest officer to you?

A. I think it could have been Thompson or Bowman of the Virginia State Police. I don't recall.

Q. But when the statement was made, was it out so everyone *can* hear or only you could hear?

A. It was loud enough for me to hear.

Q. And would you tell me once more what is was that [fol. 277] you heard, sir?

A. "Blue, it wasn't me that turned you around."

Q. Had you heard any previous conversation between these two?

A. Between them?

Q. Yes; at this time, and while they were under arrest.

A. They could have spoken to each other prior to the time I heard that. I wasn't sitting right with them.

Q. But you didn't hear anything else.

Did you hear anything after that statement was made?

A. No, sir.

Q. And the defendant Miller had nothing at all to say.

A. That is right, sir.

Q. Now, Officer Wurms, in response to a question by Mr. Stevas—

so than in any criminal case I have tried, more time you have taken at the table in consultation, and I have given you quite a good deal of leeway.

Mr. Williams: Yes, you have, Your Honor.

The Court: I have tried not to prejudice your case.

Mr. Williams: Certainly.

The Court: Now, a Judge has some responsibility in seeing these cases are tried with dispatch. Otherwise, why should I be sitting here?

[fol. 251] Mr. Williams: I appreciate that, Your Honor. One of the reasons for that has been that Mr. Harris only came in the case a day before trial.

The Court: That doesn't help us any, to give that as a reason. That still is delaying a lawsuit, and when you have two counsel that are constantly consulting with each other, taking time on every other question—you have been sitting there entering into a long consultation, and that just isn't the way these cases should be tried.

Well, we will go ahead now. I will permit you to ask any impending question you desire to.

Mr. Williams: Would you give me about two minutes to look at this testimony?

The Court: Well, if it is two minutes, I will give you two minutes.

Mr. Williams: Very well.

(Thereupon counsel resumed their places at the trial table.)

Mr. Stevas: The Government is finished with this witness.

The Court: Go ahead, counsel.

Recross examination.

By Mr. Williams:

Q. Officer Wilson, directing your attention to the testimony you gave on Thursday, April 7, 1955—

The Court: Do you have a copy of this?

Mr. Stevas: No, sir, Your Honor.

The Court: Give counsel a copy of this.

Mr. Williams: He can have this copy, Your Honor. I didn't know he didn't have one.

By Mr. Williams:

Q. The testimony which you gave on April 7 of 1955 before the Honorable Judge Holtzoff, the question was—

The Court: What page are you reading from?

Mr. Williams: On page 24, Your Honor.

Mr. Stevas: I think he will have to lay a proper foundation, if Your Honor please, before he reads the testimony in.

The Court: What question are you referring to? What line is it, so I can locate it?

You claim this question is impeachment of any testimony he has given? That is the only way you can ask any impeachment question, counsel.

Now, we can't be taking any time unless you have a direct impeaching question to make with reference to testimony which this witness has given. Now, that is the rule.

Mr. Williams: It is the seventh line, Your Honor, page 24. [p. 25?] The Court (reading): "I believe the chain latch on the door was broken," you mean?

Mr. Williams: Yes.

The Court: Well, ask him the question.

By Mr. Williams:

Q. On yesterday, Officer, when I asked you whether or not there was a chain on the door, I think your testimony was that you didn't see a chain, or there was no chain on the door.

A. To the best of my recollection yesterday, and as of today, I don't recall a chain being on the door.

Q. Now, I direct your attention to a question and answer which you gave to that question of whether or not there was a chain on the door, which you gave on Thursday, April 7, 1955:

"Question: Was the door itself broken?

"Answer: No, sir.

"Question: What was broken, if anything?

"Answer: I believe the chain latch on the door was broken."

Does that refresh your memory now, sir?

A. I still can't recall—I can't recall at this time whether there was a chain on the door or not?

Q. Very well, sir.

[fol. 254] Do you recall having been asked that question and having given that answer on April 7, 1955?

A. Sir, I recall the question and the answer.

Mr. Williams: I have no further questions.

Mr. Stevas: What was your answer to that?

The Witness: I do recall.

Redirect examination.

By Mr. Stevas:

Q. When was the time you went into the premises; what date?

A. March 23, 1955.

Q. And the testimony that you gave on the motion was on April 7, 1955?

A. Yes, sir.

Q. That was a short time after the time you had been into the premises, isn't that right?

A. Yes, sir.

Q. And your testimony as of today or as of yesterday when you testified, you didn't recall that?

A. Yes, sir.

Mr. Stevas: I have no further questions.

I submit that is improper impeachment and move it be stricken.

The Court: Well: I think it is for the jury to deter-
[fol. 255] mine.

(Thereupon the witness left the stand.)

Mr. Stevas: I call Officer Wurms.

Thereupon,

IVAN WURMS, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. Mr. Wurms, will you kindly give us your full name and spell your last name for the court reporter?

A. Ivan Wurms—W-U-R-M-S (spelling).

Q. And your first name is I-V-A-N (spelling)?

A. Yes, sir.

Q. And Officer Wurms, where are you employed?

A. Metropolitan Police Department.

Q. And where are you assigned at the present time?

A. United States Attorney's Office.

Q. Now, Officer Wurms, directing your attention to the month of March, namely, the early morning hours of March 25, 1955, were you so assigned at that time?

A. Yes, sir.

Q. And in the early morning hours of March 25 were you working with any other Agents or Officers?

[fol. 256] A. Yes, sir.

Q. And with whom were you working on March 25th?

A. Agent Wilson, Agent Pappas of the Federal Bureau of Narcotics, Officers Bowman and Thompson of the Virginia State Police, and Arthur Lewis.

Q. How long have you been a member of the Metropolitan Police Force, Officer Wurms?

A. Over six years.

Q. And during the course of your duties, have you been attached to the Narcotic Squad, or worked with the Narcotic Squad?

A. Yes, sir.

Q. And approximately how long have you been working in Narcotics?

A. Over three years.

Q. Officer Wurms, I will hand you what has previously been marked as Government's Exhibit No. 1-A and ask you to look at that, please.

Can you identify Government's 1-A, Officer Wurms?

A. Yes, sir.

Q. And how do you identify it?

A. By my initials.

Q. What do you identify Government's 1-A to be?

A. As the envelope taken from the cab at 13th and Fairmont Streets where Arthur Roy Shepherd was apprehended.

Q. Did you recover that from the taxicab?

A. I did, sir.

Q. And can you tell these members of the jury just where in that taxicab you recovered that envelope?

A. In the front seat more toward the middle of the cab, almost under the seat.

Q. Was it under the seat or on the seat?

A. Under the seat.

Q. And at the time you recovered it under the seat, that would be on the floor of the cab?

A. On the mat.

Q. Now, was there anything inside of Government's 1-A at that time?

The Court: When you say "under the seat," do you mean on the floor, or on the seat itself?

The Witness: No, sir, on the floor mat, sort of under the seat of the cab.

The Court: I see.

By Mr. Stevas:

Q. How far under the seat of the cab on the floor was it, Officer Wurms, with respect to where the feet of the passengers are?

[fol. 258] A. More or less directly—that would be vertically down—looking vertically down from the edge of the seat. You could just see it protruding just a little.

Q. Now, at the time you picked that envelope up, did you, sir?

A. I did.

Q. Did you have occasion to look inside of it?

A. I immediately turned it over to Agent Wilson and he is the one who opened it up.

Q. Let me show you what has been marked as Government's No. 1-A and ask you to look at the contents—Government's 1, may I correct that for the record.

Look at Government's 1 and look at the contents of that, if you will.

Now, can you identify Government's Exhibit No. 1 for identification?

A. I can, sir.

Q. And how can you identify that?

A. By my initials.

Q. What do you identify Government's No. 1 to be?

A. As the contents taken out of Government's Exhibit 1-A.

Q. And you turned that over to Agent Wilson?

A. I did, sir.

[fol. 259] Mr. Stevas: Will your Honor indulge me a moment.

By Mr. Stevas:

Q. Now, Officer Wurms, let me hand you what has been marked as Government's No. 3-A and 3-B and have you look at those, if you will.

And having looked at those, Officer Wurms, can you identify, first, Government's 3-A?

A. I can identify it, yes, sir.

Q. Can you identify Government's 3-B?

A. Yes, sir.

Q. And how can you identify each of those?

A. By my initials, sir.

Q. And what do you identify, first, Government's 3-A to be?

A. As the money, official Government advance funds taken from the bed underneath the sheet by myself.

Q. Underneath what bed? Where was this bed located?

A. The bed was in the bedroom of 1337 Columbia Road, Apartment No. 1.

Q. And with respect to Government's No. 3-B, what do you identify that to be?

A. That is the money which was handed to me by Bessie Byrd.

[fol. 260] Q. Now, was anything done with 3-A and 3-B in your presence at that time?

A. They were handed over to Agent Wilson and Agent Wilson compared the serial numbers of the money with the money list we already had prepared.

Q. And with respect to Government's No. 3-B, would you take the contents out of that envelope, sir?

Can you tell us the denominations of the bills that you recovered from Bessie Byrd?

A. Looking at the money?

Q. Yes.

A. Well, \$5.00 bills and singles.

Q. How many \$5.00 bills are there, sir?

A. Six.

Q. And how many singles?

A. Four, sir.

Q. And with respect to the contents of Government's No. 3-A—

Would you put those back into 3-B, first?

(The witness complied.)

Can you tell us what the contents were of Government's 3-A?

A. 3-A is the money that I recovered from the bed, under [fol. 261] neath the sheet, in the apartment.

Q. What are the denominations of those bills?

A. Five \$10.00 bills and sixteen \$1.00 bills.

Q. And you turned those over to Agent Wilson?

A. I did, sir.

Q. Let me hand you what has been marked as Government's Exhibit No. 5 for identification and ask you to look at that, if you will.

Having looked at that, sir, can you identify that?

A. I can, sir.

Q. And what do you identify—

How can you identify it?

A. By my initials, sir.

Q. And what do you identify Government's No. 5 as?

A. This box was found by myself in the garbage pail in the kitchen of Apartment No. 1, 1337 Columbia Road, Northwest, Washington, D. C.

Q. And at the time you found that in the garbage pail in the kitchen was there anything inside of Government's No. 5?

A. There was, sir.

Q. And what was inside of it?

A. Empty gelatin capsules and ashes and cigarettes.

Q. And what, if anything, did you do with that, sir?

[fol. 262] A. I turned it over to Agent Wilson.

Q. Showing you what has been marked as Government's No. 6 for identification, I will ask you to look at that, if you will.

Having looked at that, can you identify that?

A. I can, sir.

Q. And what do you identify that to be?

A. I identify it by my initials, and I identify it as being recovered by myself in the trash basket in the bedroom.

Q. And what is that Government's No. 6?

A. This is the envelope usually where people will put gelatin capsules after they sell them.

Q. And you found that where, sir?

A. In the bedroom of Apartment No. 1 in 1337 Columbia Road.

Q. Where there?

A. In the trash basket.

Q. What did you do with Government's No. 6?

A. Turned it over to Agent Wilson.

Q. At the time you obtained from the floor of the taxicab Government's No. 1-A, the envelope, with the contents in it, were there any tax stamps as required by law affixed thereto?

[fol. 263] A. No, sir.

Q. In your experience over the past three years working in the narcotic traffic, are you familiar with the prices of capsules of narcotics similar to those recovered in this case?

A. I am, sir.

Q. And can you tell us in the month of March of this year what the price of capsules was, the wholesale price?

A. The wholesale price would be a dollar a cap, in large quantities of a hundred or more.

Q. Now, do you know the defendant Shepherd?

A. I do, sir.

Q. And do you know the defendant Miller?

A. I do, sir.

Q. And do you see them seated here in the courtroom today?

A. I do, sir.

Q. And will you point first to the defendant Shepherd?

A. Arthur Roy Shepherd is sitting at the end of the table.

Q. And the defendant Miller?

A. Is wearing the blue suit.

Q. And the defendant Bessie Byrd?

[fol. 264] A. Between Shepherd and Miller.

Mr. Stevas: May the record show he points to the defendants, Your Honor?

The Court: Yes.

By Mr. Stevas:

Q. Now, Officer Wurms, did there come a time while in these premises 1337 Columbia Road, that you had occasion to hear any statements by the defendant Shepherd?

A. I did, sir.

Q. And to whom was the defendant Shepherd talking at that time?

A. To Blue Miller.

Q. Tell us, if you will, Officer Wurms, what you heard the defendant Shepherd say to the defendant Blue Miller?

Mr. Harris: If Your Honor please, in the absence of the testimony so far as showing the defendant Byrd was present, Your Honor will so instruct the jury that whatever was said between these two would apply only to those and not to the defendant Byrd.

The Court: That may be so understood.

Mr. Stevas: All right, sir.

The Court: The jury is to understand that that is the situation.

It does not apply to the defendant Byrd, only to those [fol. 265] present.

By Mr. Stevas:

Q. Tell us, if you will, what you heard the defendant Shepherd say to the defendant Miller?

A. Arthur Roy Shepherd said to William Miller, he said, "Blue, it wasn't me that turned you around."

Q. What, if anything, did the defendant Blue Miller say at that time?

A. Nothing.

Mr. Stevas: I have no farther questions of this witness.

Cross-examination.

By Mr. Harris:

Q. Officer Wurms, in response to a question by Mr. Stevas, you stated that no tax stamp was attached to the package that you found; is that correct, sir?

A. That is right, sir.

Q. How much tax would be due on whatever was found?

A. I don't know, sir.

Mr. Stevas: I am sorry, if Your Honor please; I missed that question and answer.

Might I have that?

The Court: "How much tax would be due on what was found?"

[fol. 266] Mr. Stevas: I object to that.

The Court: He has already answered it. He doesn't know.

Mr. Stevas: All right.

By Mr. Harris:

Q. Now, Officer Wurms, you stated that you found Government's Exhibit for identification 1-A in a taxicab.

A. I did, sir.

Q. And where was that, sir?

A. In the front of the taxicab.

Q. No, where was the taxicab, is what my question is, more directly.

A. Where was the taxicab?

Q. Yes, sir.

A. 13th and Fairmont Streets, Northwest.

Q. And what time of the day or night was this, sir?

A. About 3:45 a. m., on March 25, 1955.

Q. Well, how did the cab come to be there; was it just standing at the pavement, or something?

A. I pulled the cab over, sir.

Q. And why did you pull the cab over, Mr. Wurms?

A. Because we wanted to arrest Arthur Roy Shepherd.

Q. Did you have a warrant for his arrest?

A. No, sir.

[fol. 267] Q. Had he committed any violation of the law?

A. He did, sir.

Q. And what had he violated, sir?

A. He violated the narcotic laws.

Q. Would you please tell this Court and jury how he had violated the narcotic laws, sir?

Mr. Stevas: Now, if Your Honor please—

The Court: I don't think you should object to this.

Mr. Stevas: I have no objection to it, but he may regret it.

The Court: Oh, I understand. He is opening the door, and that is up to him.

Mr. Harris: I will withdraw that question, then, Your Honor.

The Court: All right.

Mr. Stevas: I have no objection to it.

The Court: All right.

By Mr. Harris:

Q. At the time that you stopped the cab, Officer Wurms, where was the defendant Shepherd sitting?

A. In the front seat, closer to the middle of the cab rather than leaning against the door of the passenger's side.

Q. Had you had him under observation for a while before you stopped the cab?

A. We did, sir.

Q. When you say "we" to whom do you refer, sir?

A. Arthur Lewis, Frank Pappas, Fred Wilson, Officers Bowman and Thompson.

Q. And Arthur Lewis was with you when you stopped this cab?

A. No, sir.

Q. Then I put my question, who was with you then, when you stopped the cab, Officer Wurms?

A. Riding with myself was Officer Bowman, and in the car behind was Agents Pappas and Wilson and Thompson.

Q. And at that time that you stopped it, you saw the defendant Shepherd sitting close to the driver?

A. Yes, sir.

Q. Is that right, sir?

Then when you stopped the cab did the defendant Shepherd stay in that same position?

A. I couldn't say when I stopped the cab. I was moving. He might have moved. I wouldn't say he remained motionless.

Q. Did you ever see the defendant Shepherd with the envelope that you found on the floor of the cab?

A. No, sir.

[fol. 269] Q. Did you immediately place the defendant Shepherd under arrest after you stopped the cab?

A. I didn't.

Q. Did you know who did?

A. Agent Wilson.

Q. Was Agent Wilson the first one to the cab?

A. That is a hard thing to say. I stopped the cab and everybody was moving around. I couldn't say who got to the cab first.

Q. But you would say, would you not, Officer Wurms, that the first thing that happened after stopping the cab was that this defendant was arrested?

A. I would say that, yes, sir.

Q. Then after he was arrested the cab was searched and the Government Exhibit for identification 1-A, I think it is, was found?

A. It was almost a simultaneous thing that when Shepherd came out I saw the package and everything was done about the same time. Shepherd was taken out first and then I observed the package.

Q. On which side of the cab were you, Officer Wurms?

A. Which side?

Mr. Stevas: At which time?

[fol. 270] Mr. Harris: At the time that he stopped it and he observed Shepherd taken out and he saw the package. He said it was simultaneous. I want to know where he was.

The Witness: On the passenger side.

By Mr. Harris:

Q. You were on the passenger side?

A. Yes, sir.

Q. Is it not a fact, Officer Wurms, that Officer Wilson placed the defendant under arrest?

A. He took him out.

Mr. Stevas: Your Honor, this is repetitious. He has already said that.

The Court: Yes, it is repetition.

Mr. Harris: Thank you, Your Honor.

I am trying to get the position that you were.

By Mr. Harris:

Q. Were both of you at the door at the same time, you and Officer Wilson?

A. And Agent Pappas.

Q. All three at the door of the cab at one time?

A. Surrounded the door. I would not say we were blocking the door. We were around the door.

Q. You have been a police officer, have you not, as you testified, Officer Wurms, for over six years?

[fol. 271] A. Yes, sir.

Q. Now, when this defendant was arrested, what was the usual procedure done with a person who is arrested, Officer?

Mr. Stevas: I am objecting to "the usual procedure."

The Court: I sustain the objection.

By Mr. Harris:

Q. Was this prisoner immediately taken to a precinct?

A. No, sir.

Q. And how long would you say it was, Officer, before he was taken to the precinct?

A. I would say about three hours.

Q. You had with you on this occasion, you testified, Officer Wurms, two officers from Virginia State Police?

A. That is right, sir.

Q. Who were trainees?

A. Who were going along as observers.

Q. As observers?

A. Yes.

Q. And you were to show them the proper procedures?

Mr. Stevas: Now, I object to that. They were along as observers.

The Court: You had better ask him what he was to do, [fol. 272] instead of telling him, counsel; if that is what you want to find out.

Mr. Harris: I will leave it that way, Your Honor. Thank you.

By Mr. Harris:

Q. Now, then, subsequently you went to an address at 1337 Columbia Road, Northwest, Mr. Wurms?

A. I did, sir.

Q. And did you go by yourself, sir?

A. No, sir.

Q. With whom did you go?

A. Agent Wilson, Agent Pappas, Officers Bowman and Thompson, Arthur Roy Shepherd. That is it.

Q. And of course at that time Arthur Roy Shepherd was under arrest, was he not?

A. Yes, sir.

Q. Now, when you got to 1337 Columbia Road, where did you go, Officer, at 1337?

A. I walked up to the basement entrance with Agent Wilson and I left Agent Wilson and went to the first floor, and there was a door leading down to the basement. I unlocked the door and went down through the basement and came out the basement entrance.

Q. Then did you leave the premises after that?
[fol. 273] A. No, sir.

Q. Well, would you tell us what happened next?

Mr. Stevas: Now, if Your Honor please, I submit this is not within the scope of the direct examination. If we are going to go over this whole thing again, we will have to do it.

The Court: I think he can answer it.

Go ahead.

The Witness: Agent Wilson and I were at the front door of the apartment No. 1, 1337 Columbia Road. I knocked on the front door. I said—somebody asked, "Who's there?" I said, "Blue"—in a low voice, I said "Police."

I repeated it two or three times, in that manner.

The door opened. There was a chain on the door. Blue Miller saw me, Agent Wilson, and I don't know who else he saw but he tried to close the door and at that time we put our hands inside the door and pulled and ripped the chain off, and entered.

By Mr. Harris:

Q. Then am I correct, the only thing you said was, it was about a tone of voice that you have used in the courtroom today, Mr. Wurms, "Blue, police." Is that right?

A. At a late hour, in the early mornings, I—

Q. Perhaps you didn't understand my question, Mr. [fol. 274] Wurms.

Did you use the tone of voice similar to that you have used from the witness stand today?

A. The tone? I might have said "Blue" that loud, but I didn't say "police" that loud.

Q. Well, would you illustrate for the jury and His Honor, please, about the tone that you used?

May I have Government's for identification No. 6, please?

(A document was handed to counsel by Mr. Stevas.)

In regards to this statement that you made, Officer Wurms, you were asked, and you identified Government's 6 for identification—

Mr. Stevas: I can't hear counsel.

[fol. 278] Mr. Harris: Beg your pardon, Mr. Stevas, I will keep my voice up.

By Mr. Harris:

Q. Have you seen envelopes like this before, Officer Wurms?

A. Yes, sir.

Q. And in your observation have you not seen them used sometimes for pay envelopes?

A. My experience, in what I have been doing on the Police Department—is that what you are trying to say?

Q. No, I didn't ask that question.

A. You asked my experience.

Q. I mean in your general experience, have you not seen them used in stores and banks?

A. I have, sir.

Q. So that this could be used for many purposes?

A. It depends upon the person who is using it.

Q. Yes, but in any event it could be used for many purposes?

A. Yes, sir.

Q. And many legitimate purposes.

A. Yes, sir.

Q. Similarly, Officer, you testified in regards to, I think it is Exhibit No. 5 for identification, Government's [fol. 279] Exhibit No. 5 for identification, that this you found in the garbage pail.

A. Yes, sir.

Q. Now, after you found that, sir, what did you do with it?

A. Turned it over to Agent Wilson.

Q. Was there any other debris of any kind in the pail?

A. Yes, sir.

Q. What did you do with it?

A. I left it right where I found it after I took this out.

Mr. Harris: Just a moment, if Your Honor please.

By Mr. Harris:

Q. Now, in regards to Government's Exhibit for identification 3-B, Officer Wurms, you stated that it was money that you had gotten from the defendant Byrd.

Where was she when you got that money from her, sir?

A. She was standing by the doorway from the bedroom to the kitchen.

Q. And where was the money?

A. Where was the money?

Q. Yes, sir.

A. At which time?

[fol. 280] Q. At the time that she got it or you got it from her?

A. She took it out of her robe pocket and handed it to me.

Q. And was there any other money there?

A. The money that was in there I took it in its content and handed it to Agent Wilson.

Q. I see.

A. And he compared it.

There could have been more money, and there probably was.

Q. Officer Wurms, when you entered 1337 Columbia Road, Northwest, you went up the stairs, did you not?

A. I did, sir.

Q. To the first floor?

A. I did, sir.

Q. Would you tell His Honor and the jury, please, what type dwelling that address is in Washington?

A. It is a rooming house.

Q. And there are many families in that house?

A. Yes, sir.

Q. Now, when you came down the stairs that you described in this furnace room, was the door leading into the hallway locked, Officer Wurms?

[fol. 281] A. Which hallway?

Mr. Stevas: Which hallway are you talking about?

Mr. Harris: Leading into the hallway in the basement.

You came down the stairs and the door to the furnace room leads only one place, does it not?

A. I opened it.

By Mr. Harris:

Q. It was locked at the time, was it not, from the inside?

A. I had a—to the best of my recollection I had to turn the lock to open it, yes, sir.

Q. Now, subsequently, did you ever examine that door again, that door leading to the furnace room in the basement?

A. Yes, sir.

Q. And did you examine it for the purpose of determining whether or not the key fitted that door?

A. I did, sir.

Q. Did you find any keys that fitted that door?

A. No, sir.

Mr. Harris: No further questions.

Redirect-examination.

By Mr. Stevas:

Q. What did your examination of the door leading [fol. 282] from the hallway into the furnace room, show, Officer Wurms?

A. That there was a small piece of wood molding cut away right opposite the lock.

Q. Now, you came *you came* down some steps and from upstairs came down into the basement furnace room and came down some steps?

A. Yes, sir.

Q. And then you opened the door from the furnace room into the hallway?

A. I did, sir.

Q. Did you need a key to open the door when you were inside the furnace room, to get out into the hallway?

A. No, sir.

Q. You just turned the handle or the slip bolt?

A. The lock on the—I think it was a turn lock. From the inside the lock opened the door.

Q. There was a knob on the inside?

A. On the lock.

Q. That you turned on the lock?

A. On the lock, yes.

Mr. Stevas: No further questions of this witness.

(Thereupon the witness left the stand.)

Mr. Stevas: May I call Mr. Carl Hoban?

[fol. 283] Thereupon,

CARL HOBAN, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. Now, Mr. Hoban, I am going to ask you to keep your voice up loudly so that all these members of the jury can hear you, and will you give us your full name, Mr. Hoban?

A. Carl Hoban.

Q. Carl?

A. That's right.

Q. C-A-R-L?

A. C-A-R-L.

Q. And your last name is Hoban?

A. That's right.

Q. Mr. Hoban, where do you work?

A. For the International Bank for Reconstruction and Development.

Q. And do you have any other employment in addition to working for the International Bank?

A. Well, I drive a cab in the evening.

Q. In the evening?

A. Yes, sir.

[fol. 284] Q. During the month of March of this year, 1955, were you driving a taxicab at that time?

A. Yes, sir, I was.

Q. And what cab was that that you were driving, sir? What brand?

A. Skylark 58.

Q. Directing your attention to the early morning hours of March 25, do you recall an occasion on that morning when you had come to the vicinity of 7th and M Streets, Northwest?

A. At 7th and M Streets, Northwest? Yes, I remember picking up two men.

Q. Two men?

A. Yes.

Q. And when you picked them up, sir, where did you first take them?

A. In the 600 block of M Street, Northwest.

Q. And in point of distance, from the point that you picked them up to where you first stopped, about how much was that?

A. Well, that was almost, I guess, about half a block, or nearly half a block.

Q. And you stopped there, did you, sir?

A. I stopped there, yes.

[fol. 285] Q. And did anything happen with respect to the occupants when you first stopped?

A. Well, they asked me to stop here and wait, and one of them got out.

Q. Did you see in which direction he went?

A. Well, he got out of the cab and went on the north side of M Street.

Q. Went over to the north side?

A. Over to the north side.

Q. Did there come a time when you saw that same person again that had left your cab?

A. Well, in about five minutes or a little more, he returned with another gentleman.

Q. And when the two gentlemen returned, what happened then, sir?

A. Then they instructed me to take them to the 1300 block of Vermont Avenue Northwest.

Q. Well, did the two men get inside your cab?

A. They did.

Q. And did the first man remain in your cab while the other man went across the street?

A. One man remained in the cab.

Q. Then you had three men in your cab?

A. I did.

[fol. 286] Q. And where were they seated, sir?

A. In the back.

Q. And from there did you go somewhere?

A. To the 1300 block of Vermont Avenue.

Q. When you got to the 1300 block of Vermont Avenue, what happened there, sir?

A. Well, all three men got out of the cab and then one man got back in.

Q. Now, do you know which of the three it was that got back into the cab?

A. Yes, I know which one got back in.

Q. Which one was that, sir?

A. It was a younger fellow, a young man.

Q. Well, was he one of the two men that you first picked up?

A. No, he was the last man that came to the cab.

Q. The last man that came in?

A. Yes.

Q. You didn't know any of these men, did you, sir?

A. No, sir.

Q. And prior to March 25th did you know any of the police officers or agents from the Federal Bureau of Narcotics?

A. No, sir.

Q. Agent Wurms?

[fol. 287] A. No, sir.

Q. Did you have any prearranged plan with the Police Department that you were to go to 7th and M Streets, Northwest?

A. No, sir.

Q. Now, you say this last man that got in your cab, got back into the cab when all three got out up on Vermont Avenue?

A. He did.

Q. And in what part of the cab did he get into?

A. He got in the front seat.

Q. And what happened at that time?

A. Well, he asked me to take him to the 1300 block of Columbia Road, Northwest.

Q. Did you hear anything before you left 13th and Vermont Avenue; did you hear any conversation between the man that was then in your cab and the two men who were then outside the cab?

A. Only—

Mr. Harris: Not what they said, just what you heard.

What I was getting to, Your Honor—

By Mr. Stevas:

Q. Well, did you hear anything?

A. I heard the man that got in the cab the last time, [fol. 288] asked the other fellow, wait until he got back; that is all I heard him say.

Q. Where did you go from 13th and Vermont?

A. When I left 13th and Vermont I proceeded north on Vermont Avenue and I got to Logan Circle and three other people hailed me there, so he says, "O. K., pick them up."

Q. Who said, "O. K., pick them up?"

A. The gentleman I had with me.

Q. In the front seat with you?

A. In the front seat.

Q. Now, when you left 13th and Vermont Avenue, did you have a specific address that you were to take this man to?

A. Yes.

Q. And what was that specific address?

A. It wasn't a specific address, no more than the 1300 block of Columbia Road.

Q. Just the 1300 block of Columbia Road?

A. The 1300 block of Columbia Road, yes.

Q. And you made a stop and you picked up how many people there near Logan Circle?

A. It was three people.

Q. Now, did you have occasion then to drop those people off at their destinations?

[fol. 289] A. I did.

Q. And after you dropped those three people off, how did you get up to Columbia Road from the time—do you know where you dropped the last man off at?

A. The last man I dropped off around North Capitol and L, I think, somewhere in there.

Q. And at that time this man was still seated beside you?

A. Yes, he was still there.

Q. None of the three that got in the cab got up in the front of the cab, did they?

A. No, they did not.

Q. What did you do, then, from the L Street and North Capitol? Do you recall how you proceeded then from that time?

A. Oh, I went north on North Capitol Street, I turned west on Michigan Avenue, proceeded out Michigan Avenue to Columbia Road, up to the 1300 block of Columbia Road.

Q. Now, how did you know where to stop when you got on Columbia Road?

A. He told me when to stop.

Q. The man seated next to you?

A. That's right.

Q. You don't know that person by name, do you?

[fol. 290] A. No, sir.

Q. And do you know whether or not you have seen him at all since March 25th?

A. No, sir.

Q. I will ask you to look around this courtroom and tell me if you can see that person, if you can recall if you see that person here today?

A. I see him.

Q. And will you point to him, please, sir?

A. It is the young man at the end of the table.

Mr. Stevas: May the record show he points to the defendant Shepherd.

The Court: It may so indicate.

By Mr. Stevas:

Q. Now, when you stopped you were in the 1300 block?

A: That is right.

Q. And that is a one-way street, is it not, sir?

A. That's right.

Q. Where did you stop on this particular street?

A. Well, I stopped as close to the north side as I could.

Q. Were there automobiles parked along there?

A. Cars were parked there.

Q. You were double-parked?

[fol. 291] Q. What, if anything, happened to your passenger when you stopped?

A. Say what?

Q. What if anything did your passenger do when you stopped there?

A. He asked me to wait for him, said he would be right back.

Q. Did he get out of the cab?

A. He got out of the cab.

Q. Did you see where he went?

A. No, sir.

Q. And did there come a time when he returned to the cab?

A. He came back to the cab.

Q. And about how long a time was that that he was out of your cab?

A. Oh, it wasn't over about five minutes, I don't think.

Q. And then he got back into your cab?

A. He got back in the cab.

Q. And did he get back into the front or into the back of the cab?

A. In the front of the cab.

Q. Beside you?

[fol. 292] A. Beside me.

Q. And then what if anything did he say to you?

A. He asked me to take him back to Vermont Avenue.

Q. And did you proceed back towards that direction?

A. I did.

Q. And did there come a time when you, before getting to your destination, you were stopped?

A. I was.

Q. And how were you stopped, sir?

A. Well, an automobile pulled up beside me and I slowed up, I thought someone wanted directions, and then the man flashed the flashlight on me, and then I did, "Well, this must be a policeman."

Q. And did you stop then?

A. So I stopped.

Q. Do you recall about where you were when you stopped? I mean, what streets, if you can recall?

A. Must have been about 13th and Fairmont, some place in there.

Q. Did you have any prior knowledge that you were going to be stopped there at 13th and Fairmont?

A. No, sir.

Q. Did you personally know any of the people who stopped you there?

[fol. 293] A. No, sir.

Q. Now, what happened then, at that time, sir?

A. Well, I stopped and the man got out of the automobile and asked me to see my face. He asked me where I lived, and the number of my cab, and at that time my passenger was out of the cab.

Q. You didn't see him get out, did you, sir?

A. No, sir.

Q. Now, did there come a time when you saw the officer go into the front part of your taxicab?

A. Yes, sir.

Q. And did there come a time when you saw something in his hand?

A. Well, he picked up a package and asked me if I knew it was in my cab.

Q. And did you know whether or not that was in your cab?

A. I was quite sure that it wasn't in there. I didn't know it was in there.

Q. Well, before starting out on your tour of your taxicab duty, did you do anything with respect to your cab before you started out that night?

A. No more than is usual. I usually wipe my cab off and dust it out with a whiskbroom before I start.

[fol. 294] Q. Did you have occasion to look at the inside of your cab there in the front before you started that night?

A. Oh, yes, I always dust under the front seat.

Q. Was that package there at the time you dusted?

A. No, sir.

Q. Was there anyone else that got into the front seat of that cab during your tour of duty that night up until the time the defendant got in there, other than yourself, of course?

A. I am afraid I can't quite remember whether anyone got in the front or not.

Q. But you know that that wasn't in there at the time you started out, was it?

A. I know it wasn't in there when I started out in the afternoon.

Mr. Stevas: No further questions.

Cross-examination.

By Mr. Williams:

Q. Mr. Hoban, at the time when you say you picked up the defendant Arthur Roy Shepherd, would you tell us about what time of night it was?

A. ~~It must~~ have been around two o'clock or after, in the morning.

Q. Now, did you make a manifest of this trip?

[fol. 295] A. Yes, I did.

Q. Do you have it with you today?

A. I don't.

Q. Now, there came a time when you left the 300 block of M Street and you went to the—the 600 block of M Street, rather, I am sorry—and you drove up to the 1300 block of Vermont Avenue, did you not?

A. That's right.

Q. Now, do you recall whether or not during this trip up to 1330 Vermont Avenue there was any conversation between the passengers?

A. I didn't pay any attention to the conversation.

Q. Well, *not* did you pay any attention, but did you hear them talking among themselves?

A. There was talk.

Q. Do you recall whether or not you heard any of the conversation or that the defendant Shephard had any conversation with the other two gentlemen?

A. What they were talking about, I do not know. I don't know what they were talking about.

Q. Well, is it your answer that they were talking?

A. They were talking.

Q. Now, when you got up to 1330 Vermont Avenue, did they have some further conversation as they all three got [fol. 296] out of the cab?

A. Well, they all three got out of the cab and they stood there for a moment and they said "Wait," and they paid me, and—

Q. They paid you.

Now, would you stop there just a moment.

A. Yes.

Q. Who paid you?

A. One of the other gentlemen.

Q. Did the defendant Shepherd pay you?

A. No, he didn't pay me for this trip up there.

Q. Now, when the defendant Shepherd got back into your cab, he got back in the front seat?

A. He did.

Q. Now, when was it that you knew your next destination from 1330 Vermont Avenue?

A. When was it that I knew—

Q. Where you were going next?

A. Where I was going next?

Q. Yes.

A. Well, when he got in the cab he asked me to take him to the 1300 block of Columbia Road.

Q. That is when the defendant Shepherd got back into your cab?

[fol. 297] A. That's right.

Q. Did he ever ask you to take him to 1337 Columbia Road?

A. No, sir.

Q. Now, when you got in the 1300 block of Columbia Road, could you tell us about where you parked your cab in that block?

A. Let me see: It was, I think a little better than midway of the block, or just about midway of the block.

Q. Directing your attention, Mr. Hoban, to the occasion when the defendant Shepherd got back in the cab after having gotten out there at 1330 Vermont Avenue, I think you testified that he said something to the other persons?

A. I heard them ask him to wait.

Q. If you can, from your best recollection, would you tell these ladies and gentlemen of the jury and His Honor exactly what was said, if you can remember?

A. Well, I can't remember word for word, exactly, what

was said, but I did hear him say, "Wait, be sure and be here when I get back."

That is about as far as I can get it; something along that line.

Q. Now, what kind of an automobile is Skylark Cab No. 58, Mr. Hoban?

[fol. 298] A. It is a '52 model Kaiser.

Q. Kaiser '52 model.

A. Kaiser, '52 model.

Q. Do you recall how the traffic was that night?

A. Well, the traffic wasn't very heavy. It wasn't very heavy.

Q. Did you notice any automobiles following you?

A. There were cars behind me and some passed me on my way up.

Q. Now, the automobile, the '52 Kaiser, did you say, sir?

A. That's right.

Q. Does it have a ring or transmission gear which is raised in the floor down in the center of the automobile?

A. Yes, it is raised a little in the middle of the floor.

Q. Now, when this automobile was stopped, when your taxicab was stopped there at 13th and Fairmont Streets, could you tell us where Arthur Shepherd was sitting in the cab with respect to you, yourself?

A. Well, he was sitting on the right-hand side of me, on the right-hand side of the front seat.

Q. Was he nearer the door than he was to you?

A. That I don't know exactly. He was just sitting [fol. 299] in the front seat beside me; I didn't look—or measure—to see just exactly what distance he was.

Q. Now, this cab, you say you sweep it out every time you get ready to make a run.

A. I always do—no, not every time I get ready to make a run.

Q. I mean, when you begin your operations.

A. When I start in the evening and when I stop, I usually check my cab and mostly when I—always when I start out, I sweep it out.

Q. Well, now, that seat, could you tell us about how high the distance is from the floor of the car to the bottom of the seat?

A. It must be a good two inches because I can put a broom

and my hand—I can reach under it. It is probably two or more inches. I can reach my hand under the seat. It has legs on it.

Q. And can you also reach under that seat from the back, as well as the front?

A. Yes, I think you can.

Q. Now, did you see from where in the taxicab the officer got a brown envelope?

A. Yes.

Q. Could you tell us about where in the cab that —?

[fol. 300]. A. Well, he reached from the right-hand side of the cab and reached under the right-hand side of the front seat, on the right side of the front seat, under it, and picked up a brown envelope.

Q. Now, did you see it before the officer pulled it out?

A. No, sir.

The Court: How far under the seat would you say it was? Did he have to reach far under the seat or was it toward the front?

The Witness: He didn't seem to reach very far. He opened the door, like he was looking for something, and then he reached down very quickly and picked up this package and asked me if I knew it was there.

By Mr. Williams:

Q. Now, Mr. Hoban, after you left 1330 Vermont Avenue you did not go directly to the 1300 block of Columbia Road, did you?

A. No, sir.

Q. You had as many as three passengers which you carried to other destinations, did you not?

A. I did.

Q. Now, after those passengers had been transported to their destinations, had you had an opportunity to check [fol. 301] your cab to whether or not they left anything in your cab?

A. No, sir.

Mr. Williams: No further questions.

Mr. Stevas: I have just one more question, Your Honor.

Redirect Examination.

By Mr. Stevas:

Q. The back of your cab with a passenger sitting in the back, when you look from the back under the front seat, there is a foot rest there, isn't there, for the feet of the passengers?

A. Let me see.

No, sir.

Q. You don't have a footrest at all?

A. I don't have a foot rest in the back of my cab.

Q. Well, is the distance as great underneath the seat in the back as it is in the front?

A. No, sir. It almost touches the floor in the back.

Q. It almost touches the floor in the back.

A. Almost touches the floor in the back.

Mr. Stevas: No further questions, if your Honor please.
The Court: We will take a ten minute recess.

[fol. 302] (Thereupon the witness left the stand.)

(Short recess taken.)

Thereupon,

FRANK G. PAPPAS, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. Give us your full name, please, and spell your last name for the court reporter.

A. Frank G. Pappas—P-a-p-p-a-s—(spelling).

Q. Now, Agent Pappas, where are you employed?

A. Federal Bureau of Narcotics, Washington Field Office.

Q. In what capacity are you employed there?

A. As a Federal Narcotic Agent.

Q. How long have you been so employed?

A. Approximately seven years.

Q. During the month of March, particularly March 25,

1955, and following that time, you were so employed, then?

A. Yes, sir, I was.

Q. Agent Pappas, I will hand you at this time what has been previously marked for identification as Government [fol. 303] No. 3 for identification, Government's No. 3-A, and Government's No. 3-B, and I will ask you, sir, if you will look at those three items.

Having looked at those three items, can you identify those?

A. Yes, sir.

Q. And how can you identify, first, Government's 3, the large envelope?

A. I identify this large envelope by my name, F. G. Pappas, 3-28-55, as witnessing the sealing of this envelope by Narcotic Agent Fred B. Wilson.

Q. And how do you identify Government's 3-A and 3-B, the two smaller envelopes?

A. I also identify Government's Exhibits 3-A and 3-B by my initials, "F. G. P." on each envelope here as seeing, witnessing Agent Wilson place this sum of money in each respective envelope.

Q. And what, if anything, did you see Agent Wilson do with the small envelopes, Government's 3A and 3B for identification?

A. I witnessed Agent Wilson taking 3A and 3B, these two smaller envelopes, and placing them in this large envelope and sealing the envelope with the lock seals.

Q. And for the record, the larger envelope is Government's 3 for identification.

[fol. 304] A. Yes, this one here.

Q. And now you say that was sealed at that time?

A. That is correct.

Q. Was it completely closed?

A. Yes, it was.

Q. And at that time, when it was sealed, did it look like it looks today?

A. No, it did not.

Q. What was different in it at that time?

A. This was completely closed. It was folded over. In other words, there was no break, no opening.

Q. The top edge wasn't torn open?

A. That is correct.

Q. Did you see what Agent Wilson—what did Agent Wilson do with Government's 3 after 3-A and 3-B had been placed and sealed in there?

A. He gave it to me.

Q. And did there come a time during the course of this trial when you had occasion to bring that envelope to court?

A. Yes, I did.

Q. And did you give it to someone?

A. Yes, I did.

Q. And to whom did you give it?

[fol. 305] A. I presented the envelope to you.

Q. At the time you presented it to me, in what condition was the envelope?

A. The envelope was intact, it was sealed, and the top thing was not torn open as it is now.

Q. And the lock seal had not been broken.

A. That is correct.

Q. And the top had not been opened.

A. That is correct.

Q. And when you gave it to me was it in the same condition as when you received it from Agent Wilson?

A. Yes, it was.

Q. And when was that that you witnessed the sealing of Government's Exhibit 3-A and 3-B into the large envelope, Government's 3 for identification?

A. On the 28th of March of 1955.

Mr. Stevas: No further questions.

Mr. Williams: We have no questions, Your Honor.

(Thereupon the witness left the stand.)

Mr. Stevas: May I call Agent Cadigan.

Thereupon,

JAMES C. CADIGAN, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

[fol. 306] Direct examination.

By Mr. Stevas:

Q. For the record, would you give us your name and kindly spell your last name for the court reporter?

A. James C. Cadigan.—C-A-D-I-G-A-N (spelling).

Q. What is your occupation, sir?

A. I am a Special Agent of the Federal Bureau of Investigation assigned as an examiner of questioned documents in the F. B. I. laboratory in Washington, D. C.

Q. Now, Agent Cadigan, can you tell us very briefly what your educational background is with respect to the work you do with F. B. I.?

A. I have a Master of Science degree in chemistry from Boston College in Lowton, Massachusetts.

Q. When did you obtain that degree, sir?

A. 1941.

Q. Would you briefly state what you have done to prepare yourself in a special way for the work of examining questioned documents?

A. Upon being assigned to the F. B. I. laboratory, I was given a specialized course of training and instruction which consisted of attending numerous lectures and conferences, reading various books and pamphlets, and working under the direction of qualified examiners in the laboratory.

[fol. 307] I have examined many thousands of cases involving handwriting, hand-printing, typewriting, papers, inks, erasures, mechanical impressions of all types, and so forth.

I assist in the training of our new men and give lectures to various groups and conduct research on document problems.

Q. Agent Cadigan, do you devote the full time to examination of questioned documents?

A. Yes, sir.

Q. And how long have you been doing this type of work?

A. About fourteen years.

Q. Have you ever qualified and testified before as an expert in this type of work in courts of the United States?

A. Yes, in numerous Federal courts, State courts, and Military Courts Martial.

Mr. Stevas: If Your Honor please, I believe the witness is qualified as an expert at this time.

The Court: It may be so indicated.

By Mr. Stevas:

Q. Now, Agent Cadigan, I will hand you at this time what has previously been marked for identification as Government's No. 1-A, Government's No. 2-F, Government's No. [fol. 308] 2-I and Government's No. 6 for identification, and I will ask you, Agent Cadigan, if you will look at those various exhibits for identification.

Having looked at those, Agent Cadigan, you have seen those prior to today, have you not?

A. Yes, sir.

Q. And in connection with your duties in the F. B. I., is that the occasion on which you saw those exhibits?

A. Yes.

Q. Now, did you have occasion to do anything with respect to the exhibits for identification which are now before you, namely 1-A, 2-F, 2-I and 6?

A. Yes. I was requested to compare these various envelopes.

Q. Did you perform any comparison with respect to those items?

A. Yes, I examined all of these envelopes for their physical characteristics, and length, width, thickness, surface texture, the "felting" characteristics of the paper, the pattern of the blue lines, appearance under normal light and ultraviolet light, and the overall shape created by the die that is used to cut out these envelopes before they are folded.

[fol. 309] Q. And you did that with respect to each of those items there before you?

A. Yes, sir.

Q. And you used the expression "felting."

A. Yes. That is the manner in which the fibers are laid down on the screen when the paper is being made; in other words, it is sort of a light and dark appearance depending on the number of fibers in a given area.

Q. And that is spelled "F-e-l-t-i-n-g."

A. Yes.

Q. Now, based upon your examination of all of these items, were you able to formulate an opinion based upon your education and experience in such matters, with respect to the comparison of these various exhibits?

A. Yes, sir.

Q. And will you tell us what your opinion was with respect to the comparison of these four items which I have enumerated?

A. In my opinion all of these envelopes could have come from the same box or package.

Mr. Stevas: No further questions.

Cross-examination.

By Mr. Williams:

Q. Agent Cadigan, I noticed your statement was that [fol. 310] they could have come from the same package or box.

A. Yes, sir.

Q. It is a fact that you cannot say that they did come from the same manufacturer or box?

A. Well, not from the same box, no, because the manufacturer would undoubtedly make several thousand of these and put them in boxes, so that they may have come from two or more different boxes.

Mr. Williams: No further questions.

The Court: All right, thank you. You are excused.

(Thereupon the witness left the stand.)

Mr. Stevas: May I call Dr. Young, the Chemist.

Thereupon,

JAMES L. YOUNG, called as a witness by the Government, having been first duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Stevas:

Q. Doctor, will you give us your full name, please, sir?

A. James L. Young.

Q. And your occupation?

A. Chemist, United States Treasury Department.

Q. How long have you been so employed, Dr. Young?

[fol. 311] A. Thirty-six years.

Mr. Harris: May it please the Court, we stipulate that Dr. Young is qualified.

The Court: The qualifications of Dr. Young are stipulated and agreed upon.

Mr. Stevas: Thank you, Your Honor.

By Mr. Stevas:

Q. Dr. Young, let me hand you what has been previously marked for identification as Government's No. 1 and ask you to look at that, if you will, sir.

Having looked at that, sir, are you able to identify Government's Exhibit No. 1 for identification?

A. Yes, I can. I initialed it at the time I received it from Agent Fred Wilson of the Federal Bureau of Narcotics. That was on Monday, March 28, 1955, at which time the evidence envelope, the larger of the two, was metal-sealed and intact.

Q. Now, did there come a time when you had occasion to open the large envelope, the lock-sealed envelope?

A. Yes. At a subsequent date I cut the envelope open and removed the smaller coin envelope which it contained. This is the smaller coin envelope (indicating).

Q. Did you have occasion to do anything with respect to the smaller coin envelope contained in Government's [fol. 312] No. 1 for identification?

A. Yes, I did. I opened it and found it contained 100 gelatin capsules containing a white powder.

I individually analyzed the white powder from these hundred capsules and found it to be a mixture of heroin hydrochloride, a derivative of opium, and a narcotic drug, quinine hydrochloride, and milk sugar, and the net weight of the contents of the 100 capsules was 100.7 grains—100.7/10ths grains.

The content was heroin hydrochloride, 4.58 per cent by weight.

Q. After your examination of the capsules what, if anything, did you do with the capsules?

A. I reassembled the exhibit, placed it in my personal safe in the Bureau of Internal Revenue Building here in the District of Columbia, and it remained there until it

was brought here and turned over to you, Mr. Stevas, at the time of this trial.

Q. Now let me hand you what has previously been marked as Government's Exhibit No. 2 for identification, and I will ask you to look at that, if you will, sir.

A. Yes, I identify this as an evidence envelope which was handed to me by Agent Fred Wilson of the Bureau of Narcotics of the Treasury Department on the same date, [fol. 313] Monday, March 28, 1955, at which time the envelope was metal-sealed and intact.

Q. Did there come a time when you did anything with Government's No. 2, sir?

A. Yes. At a subsequent time I cut the envelope and found it to contain five envelopes which in turn contained 381 gelatin capsules containing a white powder.

Q. Did you have occasion to do anything with respect to those 381 capsules?

A. Yes, I did. I made an analysis of the capsules, each individual capsule, and found in each of them a mixture of heroin hydrochloride, a narcotic drug, and derivative of opium, quinine hydrochloride, and milk sugar.

I proceeded to make a quantitative analysis on what was marked Exhibit 2-B, which is also Government's Exhibit 2-B.

Q. For identification.

A. For identification.

I found the content of heroin hydrochloride to be 5.82 per cent by weight.

The weights of the contents of the various envelopes, Government's 2-A for identification contained .99 capsules; the weight of the contents was 104 grains.

Government's Exhibit 2-B for identification contained [fol. 314] 100 capsules and the net weight was 100.2 grains.

Government's Exhibit marked for identification 2-C contained 100 capsules and the net weight of the contents was 102.9 grains.

And Government's Exhibit marked for identification 2-D was 50 capsules containing, the net contents of which weighed 52.6 grains.

And Government's Exhibit marked for identification 2-E contained 32 capsules, the net weight of the contents being 33.1 grains.

Q. Following your examination of these capsules what, if anything, did you do with them?

A. Well, the exhibits were reassembled and they were placed in my safe in the Bureau of Internal Revenue Building here in the District and remained there until they were brought here and turned over to you, Mr. Stevas, at the time of the trial.

Q. Now, Dr. Young, with respect to the capsules contained in both Government's 1 for identification and Government's 2 for identification, is that a relatively high grain narcotic content in those capsules?

A. Well, it is higher than the usual strength heroin.

Mr. Stevas: No further questions.

Mr. Harris: No questions, Your Honor.

[fol. 315]

OFFERS IN EVIDENCE

(Thereupon the witness left the stand.)

Mr. Stevas: At this time, if the Court please, the Government would like to offer into evidence Government's Exhibit No. 1 and 1-A;

Government's Exhibit 2, 2-A through 2-I;

Government's Exhibit 3, 3-A, B and C;

Government's Exhibit No. 4-A and 4-B,

Government's Exhibit No. 5; and

Government's Exhibit No. 6 for identification.

We offer all of these exhibits in evidence at this time.

The Court: Any objection?

Mr. Harris: Yes, Your Honor.

May we approach—

The Court: The same objection as heretofore?

Mr. Harris: The same objection as heretofore, and then we have the additional objection, Your Honor, in regards to—particularly in regards to Government's 1 and 1-A, which was found in the taxicab, for the reasons—

The Court: It will be received.

(Thereupon Government Exhibits Nos. 2, 2-A through 2-I; 3, 3-A, B and C, 4-A and 4-B, 5, 6, previously marked for identification, were received in evidence.)

[fol. 316] Mr. Harris: For the sake of the record, I have one additional objection.

The Court: Certainly.

Mr. Harris: Particularly the caps, 381 found in the furnace room. We raise particular objection to those, too.

The Court: I understand.

Mr. Harris: Yes, Your Honor. Thank you.

Mr. Stevas: May I approach the bench?

The Court: Yes.

(Thereupon counsel for the parties approached the bench, and in a low tone of voice conferred with the Court, as follows:

Mr. Stevas: If Your Honor please, for the record I will ask Your Honor to take judicial notice of the court file in this case which contains the waiver by the Juvenile Court Judge with respect to the defendant Shepherd, waiving jurisdiction over him so that the District Court could proceed in this matter.

That is contained in the file.

The Court: The record may indicate that I take judicial notice of that fact.

That is a fact, is it not?

Mr. Williams: Yes, Your Honor.

The Court: All right.

[fol. 318] (Thereupon the counsel resumed their places at the trial table.)

Mr. Stevas: With that, if the Court please, the Government rests its case at this time.

Mr. Harris: May we approach the bench, Your Honor?

The Court: Certainly.

(Thereupon counsel for the parties approached the bench, and in a low tone of voice conferred with the Court as follows:)

MOTION FOR JUDGMENT OF ACQUITTAL

Mr. Harris: May it please the Court:

At this time, as the Government closes its case, we of course make a motion for a directed verdict of acquittal

for these defendants; in that there has been; particularly with regards to Count 1, there has been no showing by the Government that there was any agreement or concerted action on the part of these defendants which would make out any count of conspiracy.

There has been no affirmative showing, Your Honor, that there was any knowledge on the part of these defendants as alleged in the indictment, of any importing of anything here. ~~There has been no showing that there was importing.~~ [fol. 318] There has been no showing that these things taken at all should be actually attributed to these defendants.

Those are my reasons for requesting a directed verdict of acquittal at this time.

The Court: Denied.

Mr. Harris: Then there has been what we would say, Your Honor, and particularly in the other acts, there is no showing that there was a package containing 100 capsules of heroin, as the indictment alleges, and that would be—

The Court: There is no showing what?

Mr. Harris: Of a hundred capsules of heroin, as it is here, Your Honor. They say in No. 4 of the overt acts "a package containing 100 capsules of heroin."

The Court: That was the testimony.

Mr. Harris: The testimony, Your Honor, was that it was a mixture. Would it not make a difference, and not leaving it as it is, it is prejudicial.

The Court: Oh, no, it is heroin. The Chemist so testified, it was heroin.

Mr. Harris: As a mixture.

Well, I make that for the record, Your Honor.

[fol. 319] The Court: You have your objection on the record.

Mr. Williams: In the overt acts and in the subsequent counts, the counts overlap and are duplicitous, Your Honor.

The Court: No. Put your objection on the record.

You have an additional objection that the counts are duplicitous and overlap.

Mr. Williams: As they refer particularly to the 100 capsules of heroin.

The Court: All right, that may be noted for the record.

(Thereupon counsel resumed their positions at the trial table.)

EVIDENCE ON BEHALF OF DEFENDANTS

Mr. Harris: Mr. Marshall, will you call Octavia Walker.

Thereupon,

OCTAVIA WALKER, called as a witness for and on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

[fol. 320] Direct examination.

By Mr. Harris:

Q. Now, Miss Walker, I am going to ask you, to please keep your voice up, so that the last gentleman in the jury box may hear you and His Honor and Mr. Stevas.

Would you give your name and address, please?

A. Octavia Walker, 1337 Columbia Road, Northwest.

Q. That is Washington, D. C.

A. Yes.

Q. How long have you lived at that address, Miss Walker?

A. About three years.

Q. Do you know the defendants seated at the table?

A. Yes.

Q. And do they live in the same apartment house as you live?

A. Yes.

Q. And that is an apartment house?

A. Yes, it is.

Q. A number of people live in that building.

A. Yes.

Q. Directing your attention to March, on or about March 25th of this year, did you visit at the apartment of the defendants Miller and Byrd?

[fol. 321] A. Yes.

Q. And would you tell His Honor and the jury what occurred on that occasion?

A. We had gone to the Patio Lounge that night, and we arrived at the apartment at 1337 Columbia Road around

2:30 a.m., and we prepared to fix a snack in the kitchen that night and about—I guess we were there about a half-hour or so and a knock came on the door and Bessie went to answer the door and it was her brother Arthur Shepherd.

Q. Is that the defendant Arthur Shepherd?

A. Yes.

Q. Is the brother of the defendant Bessie Byrd?

A. Yes.

Q. What happened then?

A. Well, they started straight back to the kitchen and he took—he had some money in his hand, and he asked Bessie to keep this money for me, and she proceeded—

Q. Now, where was he and Mrs. Byrd when this statement you just related was made?

A. In the kitchen.

Q. And in your presence?

A. Yes.

Q. Then what happened?

A. He asked her to keep some money for him, and [fol. 322] she took the money in her hand and started to count it out on the table, and she counted it out and I think it was a hundred dollars, and she asked him where did he get the money from, and he said he won it gambling.

Q. Who was present at this time?

A. Bessie Boyd, Gertrude Bush, and myself.

Q. Well, was Mr. Miller there?

A. Mr. Miller was in bed asleep.

Q. After the money was counted, what happened next? What did the defendant Shepherd then do?

A. He went and got a glass of water out of the Frig. and then he left.

Q. How long did you stay there after that?

A. Oh, I think we were there about five or ten minutes after he left.

Q. And then you went upstairs to where you lived?

A. Yes.

Mr. Harris: Your witness, Mr. Stevas.

Cross-examination.

By Mr. Stevas:

Q. You say you know the defendant Miller?

A. Yes.

Q. By what name do you know him?

A. William Miller.

[fol. 323] Q. Do you have anything to do with the renting of those apartments?

A. No, I don't.

Q. Where do you live in this building?

A. First floor.

Q. And how long have you lived there?

A. About three years.

Q. How long has the defendant Miller lived there?

A. I don't—I think they moved there around the last of January or the first of March.

Q. Of this year?

A. Of 1955.

Q. Did you know him before he moved there?

A. No.

Q. And you say you know the defendant Bessie?

A. By what name do you know her?

A. Bessie Byrd.

Q. And do you know of your own knowledge that both Bessie Byrd and the defendant Miller live in this Apartment 1-A?

A. Yes.

Q. It is in the basement.

A. Yes.

Q. The defendant Shepherd here doesn't live there, does he?

[fol. 324] A. No.

Q. And so that when you say that they all lived there, you mean Bessie Byrd and Miller lived there?

A. No.

Q. Now, where had you been on this particular occasion?

A. We had gone to the Patio Lounge.

Q. Where is that?

A. 711—I think it is the 700 block of 13th Street. I am not sure of the address.

Q. Is that a restaurant?

A. It is a restaurant and night club.

Q. And what time did you and Bessie Byrd and Mr. Miller—were those the three that went?

A. No, Mr. Miller didn't go with us.

Q. Oh, he didn't go with you.

A. No.

Q. Well, who went?

A. Gertrude Bush, Bessie and I.

Q. Well, where did you pick up Bessie from?

A. The apartment at 1337.

Q. At what time?

A. Oh, I think we went down about one o'clock.

Q. And was that one o'clock in the afternoon?

[fol. 325] A. One o'clock at night.

Q. In the morning.

A. Yes.

Q. In the A. M.

A. Yes.

Q. Where did you pick Bessie up from?

A. Her basement apartment.

Q. And how did you get to her basement apartment?

A. Well, I go out the front door and there are steps leading from the outside to the basement.

Q. And what date was this?

A. The 25th of March.

Q. Do you know what day of the week this was?

A. No, I don't. I can't recall the date—the day.

Q. And the three of you women went to this Patio?

A. Yes.

Q. Now, did you meet anyone there?

A. No.

Q. Did you have something to eat there?

A. No.

Q. Did you just go and talk there?

A. We had drinks.

Q. You had drinks?

[fol. 326] A. Yes.

Q. Did any men join the company?

A. No.

Q. Just the three women.

And you left—how did you get from Bessie Byrd's house or apartment over to the Patio?

A. We caught a cab.

Q. And what time was it you caught this cab?

A. We left about one. I guess it was—we walked to the corner to get a cab, so that is not long after one.

Q. And what time did you get to this Patio?

A. About 1:20 or something like that.

Q. And how long did you stay in this Patio?

A. We were there about a half-hour. They close at 2 a. m.

Q. They close at 2 a. m.

A. Yes.

Q. And you knew that before you went there?

A. Yes.

Q. How many drinks did you have in the Patio?

A. Oh, I don't know.

Q. Did Bessie Byrd have anything to drink?

A. Yes.

Q. Did Gertrude have anything to drink?

[fol. 327] A. Yes.

Q. Did you?

A. Yes.

Q. But you don't know how many?

A. No.

Q. Whose suggestion was it that you go to the Patio?

A. Mine.

Q. When did you make the arrangements with Bessie Byrd to go there?

A. The day before. The 24th.

Q. The 24th.

A. Yes.

Q. And did you come directly back to Bessie Byrd's from the Patio?

A. Yes, we came straight back home.

Q. Gertrude was with you?

A. Yes.

Q. You came back by taxi?

A. Yes.

Q. How did you get into the Apartment 1-A?

A. We went from the front entrance to the basement.

Q. Was the door locked to 1-A?

A. Her apartment door?

Q. Yes, ma'am.

[fol. 328] Q. Yes.

Q. How was it opened?

A. She had a key.

Q. Did she open it?

A. Yes.

Q. And you went in, and where was Miller?

A. In bed.

Q. Asleep?

A. Yes.

Q. Did he wake up when you were in there?

A. No, we went straight to the kitchen when we came in. The first room is the living room and we went straight back to the kitchen.

Q. And this was at what time?

A. Oh, I guess around 2:30.

Q. You left the Patio at 2, didn't you?

A. Yes; it doesn't take a half hour from the Patio to our house. In fact, it might not take that long.

Q. Then it was before 2:30 that you got to Bessie's apartment.

A. Yes; it might have been a little before then.

Q. And the three women went to the kitchen and fixed a snack?

A. Yes.

[fol. 329] Q. Now, don't they serve food at the Patio?

A. Yes, but why buy food when you can cook it at home.

Q. My question, ma'm, is, do they serve food at the Patio?

A. Yes.

Q. Thank you.

You can have drinks at home too, can't you?

A. Yes, if you have a bottle.

Q. How long were you three women in the kitchen before a knock came at the door?

A. About a half an hour, I guess. I don't know for sure.

Q. And you got there before 2:30; is that right?

A. Yes; it might have been a little before 2:30.

Q. So it was before three o'clock the knock came on the door?

A. I don't know; I am not sure of the time that we were in the kitchen before the knock came, but I—

Q. Was Miller awake when the knock came?

selves when you go back to the jury room, which must be resolved.

You listened to Officer Lewis testify, and much reference has been made to one Clifford Reed:

Now, if you will remember, Clifford Reed was the person who first started this case to moving.

You heard testimony that Clifford Reed was arrested earlier in the night, about 1:35, and a plan was made. A-1 who did he make the plan with? He made the plan with Officer Wilson and other officers.

And what was the plan?

The plan was, ladies and gentlemen, to have a trial here in the District Court on this day and yesterday, and so far that plan has succeeded, but where is Clifford Reed?

You heard the testimony of the officers that at the time [fol. 358] when they entered the premises at 1337 Columbia Road, that they found two persons in that apartment. That was Miss Bessie Byrd and William Miller.

They didn't say they were violating the law. They weren't doing anything. They said that in a housecoat pocket they found some money, and under the covers of a bed they found some more money. It all totalled one hundred dollars.

Now, that is the reason why these defendants sit here, ladies and gentlemen of the jury, is because they had that money there; because if the money had not been there they would not be here today.

Again I direct your attention, if I may, please, to the testimony of the witness which is unimpeached in her explanation as to where the money came from. It came from Arthur Shepherd.

Now, I certainly submit, ladies and gentlemen of the jury, that that is not justification enough, as Mr. Stevens would have you to do, to go into that jury room and come back with a verdict of guilty on behalf of the defendants Miller and Byrd, to say that they were dealing in narcotics—and that is all you have, ladies and gentlemen of the jury. That is all you have.

They are indicted on a conspiracy count. Where is the [fol. 359] agreement? Where is the plan?

There has been no testimony that there was ever any conversation between these defendants about a plan or any

A. He was still in bed.

Q. And Bessie opened the door?

A. Yes.

Q. And you are sure that Shepherd came in there, aren't [fol. 330] you?

A. Yes.

Q. Did you have any conversation with Shepherd?

A. No, he spoke to us.

Q. That was back in the kitchen?

A. Yes.

Q. And where did he get this money from that he handed to Bessie?

A. Well, I don't know. I think he had it in his hand.

Q. If you don't know, you don't know.

Do you know?

A. No, I don't now where he got it from.

Q. Where was the first time or the first place that you saw that money?

A. When Bessie was counting it on the table.

Q. And do you know what denominations those bills were?

A. Quite a few ones and some fives and tens; I don't know what else.

Q. Your name is what?

A. Octavia Walker.

Q. Well, what name are you living in this premises 1337 Columbia Road under?

[fol. 331] A. Octavia Walker.

Q. Who do you pay your rent to?

A. I don't pay the rent. I live with my mother and father.

Q. Is the apartment in your mother's and father's name?

A. Yes.

Q. And what is their name?

A. Waldroth; Clifton and Susie.

Q. You say there was a hundred dollars?

A. Yes.

Q. And Miller is still asleep on the bed, isn't he?

A. As far as I know, yes, he was still asleep. We were in the kitchen.

Q. How long was Shepherd in the apartment?

act in accordance with a plan, and Mr. Stevas certainly knows that. If he had it, ladies and gentlemen of the jury, you would have heard it from that witness stand; and His Honor certainly will instruct you as to the law with regards to conspiracy.

I submit, ladies and gentlemen of the jury, that nothing is more dear to a man than his freedom, except his life, and when you go to the jury room, if you will, please, remember that you take with you as citizens of the United States, and as fellow men, whether or not this defendant, or these defendants are guilty or innocent in your hands and in your minds; you have a duty, certainly, to your fellow men and to yourself to weigh these facts impartially.

Don't guess.

And, as you in the ordinary course of your lives make a decision about facts, you have heard testified here, and when you total them up if there is one lingering doubt in your mind then you must resolve that doubt in favor of these defendants and your verdict must be not guilty.

For certainly but for the grace of God one day either [fol. 360] you or I may sit here charged as defendants on mere conjecture or suspicion and that certainly you would not have to happen.

So, in weighing the guilt or the innocence of any defendant—not only these—your duty is first to your God and to your country and to your conscience.

I admonish you, ladies and gentlemen of the jury, if you will weigh these facts impartially, not prejudicially, not in the heat of passion, not in the light of all of the evils which have happened all around the world and which will continue to happen as long as the world stands, but weigh them as you have heard them here and see if they can fit into the picture you have heard without crowding the edges, and without clipping the corners, and if the picture fits, if it fits “not guilty,” please don't be afraid to come out and announce your verdict in favor of the “defendants not guilty.”

Thank you.

A. Oh, I guess about five, maybe ten minutes; I don't know.

Q. Well, was he there during the time that Bessie counts out the money?

A. Yes.

Q. And had the conversation with her about winning it in gambling?

A. Yes.

Q. What did you see Bessie do with the money?

[fol. 332] A. I don't know what she did with the money.

Q. What did you see—

When was the last time you saw the money?

A. When she picked it up off the table.

Q. And what did she do with it when she picked it up off the table?

A. I don't know.

Q. Did she have it in her hand at that time?

A. Yes, but I don't know what she did with it.

Q. And then you say Shepherd left?

A. Yes.

Q. And Miller is still asleep on the bed?

A. Yes, as far as I know.

Q. And how long after that did you leave?

A. Oh, about—almost—soon after Arthur Shepherd left there.

Q. Can you give us approximately how many minutes that would be?

A. Maybe five or ten minutes after he left.

Q. And you went upstairs to the first floor?

A. Yes.

Q. Bessie was still up when you left?

A. Yes.

Q. There is only one bed in that apartment, isn't [fol. 333] there?

A. That's right.

Q. Did you have occasion to go back down to that apartment later on?

A. No.

Q. And you say that Shepherd is related to Bessie?

A. Yes, it is her brother.

Q. It is her brother.

A. Yes.

Q. Brother and sister.

A. Yes.

Q. Have you seen him up there before?

A. Yes.

Q. Many or few times since January of 1955?

A. Once before—once after that.

Q. Once—

A. Once before March 25th.

Q. Once before.

A. Yes.

Q. Was that the same time, around the same hour of night or morning?

A. No, it was in the day. It was on a Sunday.

Q. Do you work?

A. Yes.

[fol. 334] Mr. Stevas: No further questions.

The Court: You said on the evening of March 24th, you made arrangements with Bessie Byrd to go with her to this place, the Patio?

The Witness: Yes.

The Court: At what time did you make those arrangements with her?

The Witness: Oh, that was in the morning.

The Court: The morning of the 24th?

The Witness: Yes.

The Court: And did you make arrangements with her to go to the Patio at one o'clock in the morning?

The Witness: No, we just said we would go the next night.

The Court: At what particular time was that?

The Witness: Well, we didn't state any specific time. We just said—

The Court: How did you happen to go at one o'clock in the morning?

The Witness: Oh, I don't know. Just—you don't have much money and you can't go to those places too early because the bills are high. We just wanted to hear the combo that was there that night.

The Court: That is all.

[fol. 335] Mr. Harris: No further questions.

(The witness left the stand.)

Mr. Harris: The defense rests, Your Honor.

The Court: The defense rests?

Mr. Harris: Yes.

The Court: Does the Government rest?

Mr. Stevas: Yes, there is nothing to rebut. We rest.

Mr. Harris: At this point, Your Honor, we renew our motions.

The Court: Yes.

Mr. Harris: And also our——

The Court: Will you step up.

(Thereupon counsel for the parties approached the bench, and in a low tone of voice conferred with the Court as follows:)

COLLOQUY BETWEEN COURT AND COUNSEL.

The Court: How much time do you want to agree upon for closing arguments?

Mr. Harris: I think that we should be able to do ours in thirty minutes, Your Honor. That would be my estimate.

Mr. Stevas: That is agreeable with the Government.

The Court: I am just wondering about charging them. If we start now we would cut up the argument.

[fol. 336] • Mr. Stevas: I would just as soon prefer it go to the jury today because tomorrow is Friday. I don't mind making my opening argument now, if it is a time proposition.

The Court: All right.

We will go ahead then, because that will enable me to get it to the jury a little earlier this afternoon.

Mr. Stevas: That is agreeable with the Government.

Mr. Williams: In our argument could we divide our time, Your Honor.

The Court: No, I think one or the other ought to do it.

I have a consistent rule that one attorney conduct the case, and I did let you examine. I didn't make any point of it, although I have before, but I think you ought to pick out the order between the two of you.

I mean, I don't think we should have two different ones argue the case.

Mr. Williams: What we thought was that one would take a fraction of the time on the law.

[fol. 337] The Court: No one is going to take the law, sir: I am going to take that.

Well, I don't care; if you want to use one on direct and one—

No, you don't have rebuttal.

If you want to divide up your time, but you can't discuss any law.

You had better leave that to me. Leave the law to me.

Mr. Williams: We will split it up 15 minutes apiece.

The Court: All right, 15 minutes apiece.

Mr. Stevas: Your Honor, will give your usual instructions with respect to the various counts in the indictment? I have no specimen instructions that I am requesting.

The Court: Yes.

Well, here are going to be the issues:

The fact, as I see it will develop, is—it will be, of course, on the 381 capsules; the Government relies necessarily upon circumstantial evidence to show possession.

Mr. Stevas: That is right.

The Court: I am going to give the rule on circumstantial evidence.

[fol. 338] Mr. Stevas: Very well.

The Court: Of course, if they didn't have possession, or the defendant didn't have possession of those drugs, they can't be guilty of those counts, but the Government relies upon those other facts and circumstances.

Then on the other capsules, of course they have got direct evidence of sale.

Mr. Williams: You mean the 100, Your Honor.

The Court: Yes.

Mr. Williams: What is your Honor's view with regard

The Court: What is your defense going to be in this case in your argument to the jury; just that they didn't sell it, they didn't participate?

Mr. Williams: One is that there is no showing of a conspiracy here, no agreement or plan.

The Court: I understand that, but I mean on the other counts, what is going to be your argument?

Mr. Williams: Well, just—

The Court: Just that you didn't sell the drugs, that is all, didn't participate.

Mr. Williams: And that there was no possession or participation in conspiracy.

[fol. 339] The Court: I will frame my instructions accordingly:

Mr. Harris: Would you Honor also include in your instructions—I know Your Honor will define conspiracy.

The Court: Oh, sure.

Mr. Harris: And would Your Honor also include the substance of the Caruso case, that there cannot be presumption upon presumption and inference upon inference, with a presumption running, and so forth, as enunciated in that case.

That is about 123 Federal Second, Your Honor, the Caruso case.

With the circumstances here, they are going to have presumption, and as regards—

The Court: What is your position on that?

Mr. Stevas: Well, Your Honor.

The Court: Of course you are familiar with the rule that there can't be an inference upon an inference.

Mr. Stevas: That is true.

The Court: It is a well-recognized rule.

Mr. Stevas: I will rely on the regular instruction that they may draw whatever reasonable inferences they—

The Court: But what is your position as to the evidence [fol. 340] on that 381 capsules, that there can't be an inference upon an inference?

Mr. Stevas: The inference being what in this case?

The Court: Well, you see, once you show possession, of the drugs, of course you can then draw reasonable inferences from that.

The same as once you show possession of stolen property, you draw reasonable inferences, that possession of recent stolen property constitutes evidence of larceny.

But first you have to show possession.

You can't build one inference upon another inference. If you rely upon possession, based upon an inference, you can't draw another inference on that. That is their argument, you see. On that 381 capsules it is something that disturbs me a little bit.

Mr. Stevas: I hadn't thought of it, and it hadn't come up before.

The Court: I have been giving some thought to it and I am not so sure whether on the 381——

Mr. Stevas: I would prefer it be given, if there is any doubt in Your Honor's mind, so the record will be clear, give them every benefit of the doubt.

[fol. 341] The Court: It is not a question of whether I should give the instruction that bothers me. It is the question of whether I should submit those counts to the jury.

Mr. Stevas: Well, of course, the Government's position is——

The Court: There still would be the conspiracy counts, and the—it just involves two counts.

Mr. Stevas: I believe the last two counts.

The Court: Yes, the last two counts.

Mr. Stevas: Of course, we take this position on those two counts——

The Court: I wouldn't—it wouldn't be proper in view of the fact that there is direct evidence on the other counts to require another trial of this case, if there were any question about it.

Mr. Stevas: The Government's position on those 381 capsules is that they are in this M. & W. bag, which was one of our exhibits; that they are also in these brown manila coin envelopes, and they are in the Size 5 capsule.

The Court: That is circumstantial evidence.

Mr. Stevas: Then you have the same thing in the room; we have a similar brown envelope.

[fol. 342] The Court: Yes, I understand what the evidence is, but what disturbs me is whether——

In the first place, you ought to infer possession from the fact they are the same envelopes, the same capsules.

Mr. Stevas: That is right.

The Court: And once you had an inference of possession, whether you can draw another inference from the possession of them that they were sold; you see, you claim the sale of them, don't you?

Mr. Stevas: No, sir, not of the 381. We don't claim that they sold the 381.

The Court: Oh; yes, you do.

Mr. Stevas: Of course, it is alleged in the alternative.

The Court: Yes, I know, but you claim they were either sold, dispensed or distributed, and of course there has

been no direct evidence of either one, of dispensation. It has got to be based upon an inference, you see. That is what bothers me: There is a serious question.

I had one case that was affirmed up in the Court of Appeals where some drugs were found in a car but the car was owned by the person.

[fol. 343] But here, even though the cab was not owned by the defendants, there was direct evidence of sale, so that I think there is plenty of evidence to go to the jury on the question of the 100 capsules.

On the others, I am concerned about it.

Mr. Stevas: Of course, it would cut down on my argument if I can't argue all that other evidence.

The Court: Yes.

Well, there is plenty here without that.

Mr. Stevas: That is true.

The Court: So that I would not want to, as I say—I think I am going to decide that that is not a proper case, in the last two counts.

I will grant the motion to dismiss as to the last two counts.

Mr. Stevas: All right.

Mr. Harris: Thank you, Your Honor.

Mr. Stevas: Then we will be concerned with the hundred.

The Court: Conspiracy and the hundred capsules.

Mr. Stevas: That is all right.

Mr. Harris: Thank you, Your Honor.

(Thereupon counsel returned to their places at the counsel table.)

[fol. 344] : DISMISSAL OF COUNTS 6 AND 7

The Court: I just want to mention to the jury that with reference to the 381 capsules, which involves the last two counts in the indictment, Counts 6 and 7, the Court is holding that the evidence is not sufficient to present that to the jury on the basis of proof that these defendants or any of them occupied that part of the premises, the furnace room.

The Court, in dismissing these two counts, does not indicate any conviction as to how the jury should decide on the other counts. The other counts, of conspiracy, and

the counts involving the 100 capsules, will be submitted to the jury from the evidence, and it will be up to the jury to decide on those issues as explained by the Court in his charge.

You may proceed.

OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT

By Alexander Stevas, Esq.:

Mr. Stevas: May it please the Court, and you ladies and gentlemen of the jury:

The case is now concluded and it will now once again become your function to go to your jury room, after hearing arguments of counsel, and deliberate this case, come to a decision with respect to the guilt of the defendants, or their innocence, on the indictment with which they are [fol. 345] charged.

The case has been simplified somewhat by leaving us with the first five counts of the indictment which deal with the 100 capsules, so we don't have to get involved with the 381 capsules. We can simplify it by directing ourselves to the 100 capsules that were found on the floor of the taxicab.

Now, in this respect, ladies and gentlemen, and bear in mind that my comments now are not binding upon you as to what the facts and the evidence did show; this is only my recollection and it must be your recollection that governs.

Very briefly, ladies and gentlemen, our evidence, as I outlined, I believe, in identifying at the opening of the case, we showed through Mr. Lewis of the Federal Bureau that he had a purpose in mind in going to this 617 M Street, namely, to purchase the 100 capsules of narcotics;

That he got the listed money, which is right here in Government's Exhibit No. 3-A and B, and that he took this money with him;

That he went to the vicinity; that the money was transferred to the defendant Shepherd.

Following the transfer of the money he signaled the other officers and agents who were following that the transfer [fol. 346] had been effected, so that they would then have the knowledge.

Now, that is about the main part that Lewis played in his undercover capacity, was to get the ball rolling, get the money to the man that was to get the drugs, the go-between, as you might term him.

Now, we then had Officer Wilson, who is the Government's main witness in this case, and you heard all of his testimony about following the cab and how he kept the defendant Shepherd under observation, and he finally got up to this place up on Columbia Road.

Now, the most important thing, I think, in his testimony, ladies and gentlemen, is the fact that when the defendant Shepherd goes down the stairs into the basement of the premises, and you saw the outline here on the board, is that he shortly thereafter followed and looked into this long hallway, and that while looking in there, ladies and gentlemen, there was no one that he could see;

That he then came back up and had time enough to go down these steps, come back—look, come back up, go across the street, hide himself behind a tree, and then is the time when he saw for the first time a light come on in the furnace room, bearing in mind that at the time he went down these steps there was no light, according to his testimony. [fol. 347] mony.

Now, where was Shepherd during this interval?

Shepherd says that he went in here and there is a fire extinguisher here that he got this package from. That was his story to the officers.

Now we find out that Shepherd is related to one of the occupants of this room.

Now, who was it that came out and went into this furnace room? Where did these narcotics come from?

Now, of course, you heard the expert testify with respect to the comparison of the envelopes, and then you have the officers going into the apartment.

Now, was Shepherd and Bessie Byrd part of this transaction? Are they part of this conspiracy?

What do we find in their room?

A thousand gelatin capsules, empty.

What do we find in Government's Exhibit No. 1?

A very similar-type capsule, filled with this white powder which the chemist testified is a narcotic drug.

What else do we find in their apartment?

(An empty box similar to the one in which these capsules are, and it likewise contains a few capsules and some ashes, in the garbage pail.

[fol. 348] We also find in the trash basket an envelope similar to the envelope in which the narcotic drugs were found in the taxicab.

Now, you heard the testimony of Officer Wurms with respect to the statement made by Shepherd to Blue Miller, that he, Shepherd, didn't turn Blue Miller around.

It is for you to determine what did he mean by that. Was he afraid that Blue Miller was going to think that he, Shepherd, was the one that turned him in to the police?

And then we hear this strange story about Miller being able to sleep on his bed while the three women come in, and the three women very silent, and they go into the kitchen and Miller is still sound asleep.

This boy can knock on the door, and where is the bed compared to the kitchen?

The bed, ladies and gentlemen, is right there (indicating). The kitchen is behind it. Yet Bessie Byrd and all these women can hear the knocking with all their goings-on in the kitchen, and here Blue Miller is still sound asleep, nothing disturbs him.

But how, ladies and gentlemen, how can they tell us that that money got between the sheets of the bed, with Blue Miller sound asleep on the bed? Was he just lifted up [fol. 349] and the money stuck under there?

And why would Bessie Byrd divide the money?

If she is keeping it for Arthur Shepherd, wouldn't she keep it in one lump sum? She is the custodian of it.

Or was this given to Bessie Byrd and Blue Miller in payment for this hundred capsules of narcotics at a dollar a capsule?

And, oh, it is found on the floor of the cab; we don't have anyone that says that Shepherd came out of the house carrying this and gets into the cab. We can't show you that. They don't deal that way, ladies and gentlemen.

When they deal with narcotics, ladies and gentlemen, it is underhanded. You don't come out and advertise it.

So Shepherd's story to the officers, he went there for Clifford Reed and picked up a package and was to get \$10.00.

If he didn't know what was in this package, what do you think he put it down on the floor under the seat when they are pulled over to the curb for?

Do you think he was innocently victimized, that he thought that there was nothing in here, but he had better not have it on him when the police searched him?

Now, ladies and gentlemen, you have seen all the evidence here, and you have heard all the testimony, and it is [fol. 350] only on that testimony that you can judge in this case.

Now, we don't have any verbal official agreement witnessed by a bunch of officers who heard these three defendants sitting around a table chitchatting about this case, and saying to each other, "Well, you go get me a purchaser and I will give you this and that," which is the conspiracy count. You don't prove a conspiracy that way ordinarily. Because, if we could have that kind of evidence, trials would be real simple.

You prove the conspiracy by proving what the persons did in furtherance of this agreement.

Where was Shepherd going when he met Clifford Reed and Arthur Lewis?

Up to Blue's house.

Now, don't you think he knew who Blue was? Do you think he was just going up to a strange house behind a fire extinguisher?

He was going to Blue's house.

And when he gets out of the cab he tells Arthur Lewis he is going up to the 1300 block of Columbia Road. He doesn't even tell the cab driver specifically where he is going, but he tells the cab driver when to stop.

Now, the fact that he has made these inconsistent statements, ladies and gentlemen, the fact that he first denied that he even had these hundred capsules, those are matters which you can consider here.

Blue's silence—Blue Miller's silence, when Shepherd tells him, "I didn't turn you around"—that can be considered too. If Blue Miller hadn't done anything, wouldn't he have said something at that time?

And there is no question but what these are narcotics. The only question is when they, in the possession, first, of

Bessie Byrd and Blue Miller, who ended up with the \$100.00 purchase price.

Weren't they in their possession and they turned them over to Shepherd, and weren't they there in the automobile when Shepherd was arrested and the officers picked them up?

They are related.

Now, there is no question but what this is the same marked money.

Now, you heard Officer Wilson say that the defendant Blue Miller was saying that, oh, you planted this money here."

Now, that was his statement during the time Officer Wilson was comparing these serial numbers. He was screaming, "It is planted."

[fol. 352] Now they come in and say, "No, Shepherd brought that money in and gave it to me to keep for him."

There is another inconsistency:

Apparently we can't make up our minds here.

Now, the fact that there isn't too much testimony as to conversations between Lewis, Arthur Lewis and the defendant and this Clifford Reed in the taxicab; you don't come out and have real formal conversations when you are dealing with narcotics, ladies and gentlemen. You don't say too much. You never know who you are dealing with. The less said the better. The money is what talks. This is the language that these people understand, the almighty dollar.

You don't need the words.

And if the officers had planted all this evidence why do you think it would take them 2-1/2 hours to recover it all? If they had planted it, they would have known right where it was.

I think, ladies and gentlemen, that based upon all this evidence that there is no doubt at all here but that these three people were working in unison. I don't think there is any question about it, but that they were working in unison, that they wanted to distribute narcotics, they had the paraphernalia to do it; they were making money by [fol. 353] doing it. I don't think there is any doubt at all of their guilt, and I think that the case demonstrated to you ladies and gentlemen that we had excellent cooperation

here between two agencies of the government, the Federal Bureau of Narcotics and our own local officers. They took every reasonable precaution; they made every observation they could, and every bit of evidence that we could possibly present to you is here today and is right there on that table, and I submit to you ladies and gentlemen that these defendants are all three guilty of the first count of the indictment wherein they are charged with the conspiracy count, and in the other counts in the indictment, namely, counts 2 and 3, I believe you will find Bessie Byrd and Blue Miller are indicted with respect to those 100 capsules and with respect to counts 4 and 5, they are similar to counts 3 and 4; but they charge Shepherd with the violation with respect to those same hundred capsules.

And after you hear His Honor's instructions as to the law; with respect to the presumptions that you may draw from the possession and custody of those capsules, I submit to you ladies and gentlemen that the defendants are guilty with respect to count 1; that Bessie Byrd and Blue Miller are each guilty of counts 2 and 3, and that the defendant Shepherd is guilty not only of count 1, the conspiracy count, [fol. 354] but of counts 4 and 5.

And I submit your verdict should be guilty in this case as indicted in those counts.

(Thereupon, at 12:30 o'clock p. m., a recess was taken until 1:45 o'clock p. m. of the same day.)

[fol. 355]

AFTER RECESS

(The Court reconvened at 1:45 o'clock p. m., pursuant to recess.)

The Court: You may proceed, gentlemen.

ARGUMENT ON BEHALF OF THE DEFENDANTS

By J. Leon Williams, Esq.

Mr. Williams: May it please the Court, ladies and gentlemen of the jury:

First I would like to thank you on behalf of these defendants for having listened patiently over the past two days to the testimony of these witnesses, and I want to, if I may, remind you of the oath you took as jurors of your

duty to well and truly try these defendants and to base your verdict upon the evidence and solely upon the evidence as it does relate to these defendants.

Now, perhaps you will be reminded that this is a narcotics case, and certainly all of us know about some of the evils of narcotics, not only in Washington but throughout the United States and throughout the world.

Bearing that in mind, ladies and gentlemen of the jury, you will not prejudice that prior knowledge of intelligence which you have and direct it to these defendants.

And why should I say that?

[fol. 365] Because you swore that you would judge the testimony and the evidence as it relates to these defendants here before you today.

The testimony which you have heard indicates certainly that somebody had some narcotics, whether or not they came from Apartment 1-A in 1337 Columbia Road, is clear.

The officers testified that when they went into the premises there, that they searched the premises and they did not find any narcotics there; they found some marked money there.

Now, let me direct your attention, if I may, to the testimony of the witness here this morning who testified that she was present at the time that that money came into Apartment 1-A at 1337 Columbia Road. It is a reasonable explanation. Certainly you will weigh that testimony as you have the right to weigh the testimony of every witness who has taken that stand, and as His Honor will instruct you, if you believe that any witness has testified falsely about a material fact about which they could not reasonably be mistaken, then it is your duty, your privilege, to disregard any part of that testimony, or all of it.

The circumstances surrounding what happened at 1337 Columbia Road on the night of March 25, 1955, have been [fol. 357] testified to by numerous police officers, and you also swore, ladies and gentlemen of the jury, that because he was a police officer that you would give his testimony no greater weight than you would an ordinary person.

So, keeping that part of your duty and your oath in mind, I respectfully submit that the officers' testimony was not always in concurrence; that it was not always dovetailed, and you will have conflicts with which to confront your-

ARGUMENT ON BEHALF OF THE DEFENDANTS

By William Beasley Harris, Esq.

Mr. Harris: May it please the Court, ladies and gentlemen of the jury:

The Court has granted us permission to split our argument to you, and discussion with you.

[fol. 361] As you well know from your experience as jurors, defense counsel may address you only once. When we finish this time, then, of course, Mr. Stevas has one further opportunity, and then comes His Honor's charge.

I shall try not to be in any way repetitious of what co-counsel has said.

We represent three defendants. Much of what I say, of course, will go to all three, but I shall point with particular attention, if you will, to the youngest defendant, Arthur Shepherd.

As you well know, ladies and gentlemen, these defendants stand before you charged with a conspiracy.

His Honor will define that term to you and you must be guided by what His Honor says the law is. The facts are for you alone. Not even His Honor may invade the realm of the jury when it comes to the facts. That is entirely up to you.

Now, in this matter of conspiracy I would like to have you follow it in line with the facts that have been introduced, particularly as regards Arthur Shepherd.

Before I get into that, I wish to recall that the opening of the case the other day, Mr. Stevas read off a list of witnesses, and you will recall that he also asked you then as to whether or not any of you knew Clifford Reed.

[fol. 362] You have heard a great deal about Clifford Reed and you have recalled from the facts Clifford Reed was arrested at 1:30 on the morning of this incident is alleged to have occurred. There is no testimony as to where he was prior to 1:30. There is testimony to the fact that Clifford Reed was arrested for narcotics violation and is an addict.

But at no time, after he identified him, knowing where he is, has the Government produced Clifford Reed.

His Honor will say that in the absence of producing such a witness, that his testimony would probably be adverse to

the testimony offered by the Government. However, the Government—

The Court: No, there is a little more to it than that, but I will give the jury the full statement.

Mr. Harris: Yes, Your Honor, I was not trying to invade your province, Your Honor.

The Court: If part of it is given, the whole part should be given, and that is why counsel should not quote the law.

Mr. Harris: I am sorry, Your Honor, and Your Honor is correct.

The Court: All right.

Mr. Harris: I repeat, ladies and gentlemen, the law should come from His Honor and I should not have gotten into his [fol. 363] field. I apologize.

In line with what I want to point out to you, as regards Clifford Reed, notice that while he was under arrest, what did they do with him?

Took him downtown, took him back, sent him out with marked money, and there was a number of officers present, and the testimony tends to show, does it not, ladies and gentlemen, that there was an agreement among those officers and Clifford Reed to do a certain act—purchase narcotics: The officer said so from the stand. My point being, ladies and gentlemen, that it is possible in this circumstance that if you see one, you may see several conspiracies, and if you do find or see that there are several conspiracies here, then it will be your duty to find these defendants not guilty.

Arthur Shepherd, in fact, has been approached by a known drug addict. What has been said between Arthur Shepherd and Clifford Reed is not before you. Clifford Reed has been loose in the street. He is an addict. He has been arrested for a narcotics violation. The testimony has been that Clifford Reed said to this young boy, "I will give you ten dollars to go pick up a package for me."

Mr. Stevas: I must object to that, Your Honor. They excluded the testimony that Clifford Reed—the statement [fol. 364] that Clifford Reed made.

The Court: Yes.

Mr. Stevas: There is no such testimony.

The Court: No, I don't recall such testimony, counsel.

Mr. Harris: Again, as Your Honor will remind you, it

is your recollection of the facts, ladies and gentlemen, not mine.

The story, then, that—this fact is undisputed—that when Clifford Reed went into this house Clifford Reed went by himself—Clifford Reed went by himself. And as His Honor will tell you, that—no, he won't tell you this, I am sorry—I have to correct that—here would be something from a known drug addict.

Then the testimony unfolds that Shepherd does follow a certain route, when he gets to 1337.

We don't know what passed between him and Clifford Reed.

I say to you that there was an agreement among the officers. Is that not a conspiracy?

Then the testimony is crystal-clear before you that there was an arrival of the taxicab and a stopping of the taxicab, and a statement from the stand by one officer—I think it was Officer Wilson—that he didn't know of any violation that this young man had committed, but he arrested him when he stopped that cab.

And the testimony, you will recall, ladies and gentlemen, was that that cab was swept out early in the evening, in the afternoon, and the driver had not inspected it since, and in the time of taking this young man on the route he had other people in there.

His Honor will tell you, ladies and gentlemen of the jury, that where—slightly, I guess, if I may use an illustration—in a race—foot racers come neck and neck—and there is a dispute among those in sports as to whether it is the chest that wins or the one that crosses the line, or clipping of the tape.

But when they come there neck to neck, with a foot across the line, or their chests brake the tape together, and if you make the name of those runners "guilt" and "innocence" you must then make innocence.

As His Honor will charge you, you must find these defendants guilty beyond a reasonable doubt, and he will explain that term to you, and I say to you ladies and gentlemen, one of the things he points out, of great importance—our Constitution—and under the Constitution you are entitled to a speedy trial and a taking before a magistrate.

[fol. 366] Notice from the facts from the stand how long this man was kept.

Notice there have been other statements given to us.

But have you ever put yourself in a position where someone crowds on you? Even if you drive a car and someone drives you to the curb and you don't know who it is, wouldn't you be excited?

Haven't you made statements and you changed those statements because in the excitement you make a lot of things?

In other words, ladies and gentlemen, without taking up too much of your time, recapitulating, I say to you that there is a possibility that you can see here several conspiracies, if you see any, and, if you do, then it is your duty to acquit.

I say to you if you have a reasonable doubt, then it is your duty to acquit, and I say to you ladies and gentlemen that if you see these things in the balance, even, even, guilt alongside of innocence, then in that posture, too, ladies and gentlemen, it is your sworn duty then to bring in a verdict of not guilty.

I say to you that in this whole circumspect of the case that [fol 367] you are being asked to guess—don't do it—don't do it.

You have the right of your conviction that you must be convinced of the guilt of these defendants beyond a reasonable doubt.

I say to you ladies and gentlemen, in sincerity, in line with the law, and I leave this one thing with you:

Don't be colored by the fact that the term "narcotic" is used. The law is an important thing and it protects—says the courts—it is better to protect the rights of all citizens—and when you go to your jury room and weigh the facts that have been adducted from that stand, and apply the law as given by His Honor, I say to you then that you will find that the Government in this instance has not proved the guilt of these defendants beyond a reasonable doubt, and at the proper time I ask you to return a verdict of not guilty as to all counts and as to all defendants.

Thank you.

CLOSING ARGUMENT FOR THE GOVERNMENT

By Alexander Stevas, Esq.:

Mr. Stevas: May it please the Court, and ladies and gentlemen of the jury:

Unfortunately for counsel, we are not dealing here with just a plain conspiracy. He says that there may be several [fol. 368] conspiracies here.

We are only dealing with conspiracies to violate the law—not with plans on the part of the officer to ferret out and find the law violators. That is not a conspiracy in violation of the law. There is only one conspiracy here in violation of the law, and that is the agreement understood by the actions of all these people in furtherance of that conspiracy.

Now, counsel mentions the name of Clifford Reed and says that you remember me calling out the list of witnesses, but remember, if you will, that I listed the witnesses and asked if any of you knew the witnesses and then at the conclusion of all that I asked the question:

“Now, do any of you know a man by the name of Clifford Reed?”

He wasn't listed as a government witness.

And where is he?

You heard the testimony. That man was under arrest.

There is no evidence that these defendants don't know where he is just the same as I know where he is. They knew his name before this trial got under way, because I identified him by name before you were even picked and sworn.

[fol. 369] But what about the witness that they called—and they mention a name—they bring one woman here and they mention another name.

Was there any mention of that woman before this trial began?

Did I know who she was?

Could we have gotten her down here to refute what the other witness they called says?

I don't know what this other woman would have testified to. If I had known her name and her address before today, then I would have been in a position then to bring her here—they knew that.

They called the witness; she gave you the name.

Now, fortunately or unfortunately for them, they knew the names of all the people who were there because Bessie Byrd was there, and certainly when she goes at one a. m., in the morning, to some kind of a place where they have drinks, she knew who she was with.

They all three went in the kitchen together. They certainly were friends. They knew who that other witness was that was there in the kitchen with them, this other woman.

But where is she? And what would she have testified to today?

[fol. 370] Would she have backed up the story that the woman testified to that they brought here, that this defendant gave her the hundred dollars just to keep for him?

And is that reasonable, ladies and gentlemen?

Here is a man at three a. m., in the morning, he has got some fifty-six dollars of his own money on his person, he is not afraid to carry that much around, but he gets an extra hundred dollars and, oh, yes, he runs right over to the sister, "Hold this for me—won it in gambling."

And how does he explain the fact that he was on his way back to 1330 Vermont where Lewis and Clifford Reed had been left, and how does he explain this meeting between the three, and "I am going up to Blue's" and "Wait here until I come back with the stuff?"

Did he get that hundred dollars in a gambling game or did he get that hundred dollars when he met with Clifford Reed and Arthur Lewis?

And isn't it further an inference that you should reasonably draw here, ladies and gentlemen, that what actually happened here was that this defendant Shepherd went down those basement stairs into the hallway, Agent Wilson looks in, he can't be seen. Where is he? He is in the room of the defendants Bessie Byrd and Miller.

By their own testimony he is in that room.

[fol. 371] Then there is a short space of time and this light comes on in the furnace room.

Where did the narcotic drugs come from, ladies and gentlemen? This hundred capsules which this defendant Shepherd had near his person in this taxicab? This light comes on in this furnace room and what is in that furnace room?

You heard the testimony on that.

Now, they smear our man Clifford Reed. Certainly he is an addict. Certainly he is arrested for narcotics violation. But where do you think the police have to go for information to get the bigger people? Do they go to their priest, or their minister, and say, "Father, I am trying to find out who is dealing in narcotics. Give me the names of some people dealing in narcotics, Father, please."

Or, "Reverend, please?"

No, ladies and gentlemen, they have to go to the scum of the earth like Clifford Reed, these men that are addicted and dealing in narcotics. Those are the only people who can tell the police where the source of supply is, ladies and gentlemen.

You don't get that information from Readers' Digest or any magazine or talking to prominent people. You have got to go to the scum to get the scum. And that is what [fol. 372] happened in this case.

Now, ladies and gentlemen, Mr. Williams says, "Oh, this plan that we had here between the officers and Clifford Reed" and he puts it this way, "The plan is to have a trial," which was yesterday and today, I think he said.

There was no testimony that that was the plan.

Recall that I asked the agent to relate the details of the plan, but they objected to that, perhaps rightly so, and His Honor excluded it.

But the only evidence we have of what the plan was, is what the Agent or Mr. Lewis testified to, that his purpose in going to this place was to purchase narcotics, to put the marked money on the defendant Shepherd.

And that is what happened.

Now, counsel says you have no conversation to establish a conspiracy. As I said before, conversations are not necessary. You can't always have a conversation showing a conspiracy.

We rely upon these overt acts alleged in the indictment, and each and every one, I submit to you, we have proven.

Now, you will have the indictment when you go to your jury room, and you just look at those facts and see if we [fol. 373] didn't prove each and every one of them.

He says one more thing utterly fantastic—"You or I," he says, "but for the grace of God may be here facing such a charge as this."

Now, ladies and gentlemen, you or I at three a. m. in the morning wouldn't have all of that paraphernalia in our rooms in the first place; and in the second place I don't think that you or I would have this marked money on us.

So all I can say, ladies and gentlemen, is that I don't know what the defense is here; I honestly don't know what it is, because he puts the money in the place, but he says he got it from gambling, but there is no explanation as to what he was doing with Clifford Reed and the agent.

So, ladies and gentlemen, I submit once more to you, very earnestly, that these defendants are guilty as indicated in the remaining counts of this indictment.

CHARGE TO THE JURY

The Court: Ladies and gentlemen of the jury, the time has come when it is incumbent upon the Court to charge the jury as to the principles of law that govern the rights of the parties in this trial.

[fol. 374] You are the exclusive judges of the facts; members of the jury, and it would be improper for the Judge to tell you how to decide this case, and you should not try to gather any impression from any ruling the Court has made or anything the Court will say in its charge, or the tone of the Court's voice, or anything else that has transpired here, as to how the Court may feel about the controverted issues of fact, because that is your sole and exclusive responsibility, and the Court is desirous of submitting the case to you objectively without such an impression.

On the other hand, you are required to accept the law just exactly as the Court states it to be.

Very often lay people entertain some notions of their own as to what the law is or what it ought to be. There is no harm in that. We expect our lay people to be articulate, aggressive citizens, interested in the various issues of the day, but there is harm done if the notions and opinions of the lay on the part of the jurors conflict with the law as the Court states it to be, and they accept their own conflicting opinions rather than the Court's statement of the law. Then harm is done, and there is no way for us to find out how much those conflicting opinions of the lay on the part of the jurors had to do with the rendition of the verdict. [fol. 375] While, if the Court is mistaken as to what the

law is, the aggrieved party has the opportunity to raise the question on review, you see.

So you must accept the law just exactly as I give it to you. Now, because you are the exclusive judges of the fact, members of the jury, it is your responsibility to determine how much weight and credit you will give to the evidence and testimony that has been adduced before you. It is your responsibility to ferret out the truth.

A lawsuit isn't a game to be played in which one side or the other who secures the most strategic advantage wins out. A lawsuit is an objective research into the truth, and that is what we all should be interested in, to find out where the truth is in this case.

Now, in determining that issue, as to where the truth is, you should take into consideration certain common-sense rules that you have often applied in your everyday experiences. For example, you will consider the manner, conduct, and demeanor of each witness who has testified: his memory or lack of memory.

Of course, when I use the pronoun "he" I mean his or her.

The faculty or lack of faculty of each witness to see and [fol. 376] hear those things about which he has testified;

The ability or lack of ability of each witness to convey to you through the medium of words what he has seen or heard;

The probability or improbability of the truth of the testimony given by the witness; whether it appears to you to be reasonable or unreasonable;

Any bias or prejudice shown by any witness which might have influenced his judgment or colored his testimony; and all those other factors, including interest in the outcome of the case, which you as intelligent and experienced people take into consideration when you determine the difference between truth and untruth or truth and half-truth.

And if you find in this case that any witness has wilfully testified falsely or corruptly with reference to any material fact concerning which the witness could not possibly have been mistaken, you are at liberty if you deem it wise to do so, to disregard the entire testimony of that witness or any part of the witness' testimony except as it has been corroborated by credible witnesses or by facts and circumstances established by the evidence in this case.

You are the fact-finding branch of the Court, and in the [fol. 377] performance of your duties you must not let sympathy or prejudice or passion influence your judgment in any manner whatsoever. You must reach your judgment on the facts as disclosed by the evidence adduced in open court and inferences which are reasonably deducible therefrom. You are not to speculate, conjecture, or guess.

Now, three defendants, Bessie Byrd, William Miller, and Arthur R. Shepherd have been on trial here under an indictment of seven counts, two of which have been disposed of by the Court, as I indicated to you before, that Counts 6 and 7 are no longer in this case.

With reference to the five counts remaining the indictment provides:

"The Grand Jury charges on or about March 25, 1955, within the District of Columbia, and at a place or places unknown to the Grand Jurors, Bessie Byrd, William Miller and Arthur R. Shepherd, who are hereinafter referred to as the defendants, feloniously, wilfully and corruptly conspired and agreed together and with other persons unknown to the Grand Jury, to commit offenses against the United States, that is, to commit offenses of Title 26, 4704 (a) of the United States Code, Title 21, Section 174 of the United States Code."

[fol. 378] And the overt acts that are specified—eliminating the seventh overt act specified which had to do with the 381 capsules no longer involved in this case, because they are involved in Counts 6 and 7 of the indictment—specifying now only the six remaining overt acts that remained in the indictment, the indictment provides:

"—at the times and places hereinafter mentioned within the District of Columbia the defendants committed, among others, the following overt acts in furtherance of said conspiracy and to effect the objects thereof:

"1. On or about March 25, 1955, defendant Arthur R. Shepherd received a hundred dollars in marked currency, from Arthur Lewis, for purchase of narcotics.

"2. On or about March 25, 1955, after receiving the money referred to in overt act 1, defendant Arthur R.

Shepherd proceeded by taxi to 1337 Columbia Road Northwest and entered the basement, at that address, and remained there for a short time.

"3. On or about March 25, 1955, defendant Arthur R. Shepherd left the basement at 1337 Columbia Road, Northwest, re-entered a waiting taxi and drove to the [fol. 379] vicinity of 13th and Fairmont Streets, Northwest where the cab was stopped by police.

"4. On or about March 25, 1955, while the taxi in which he was riding was being stopped by police, the defendant Arthur R. Shepherd hid under a seat in the taxi a package containing 100 capsules or heroin.

"5. On or about March 25, 1955, defendant William Miller had possession of sixty-six dollars of the marked currency referred to in Overt Act 1.

"6. On or about March 25, 1955, defendant Bessie Byrd had possession of thirty-four dollars of the marked currency referred to in Overt Act 1."

Now, what I have read to you of the indictment so far has relation to the conspiracy count, in Count 1 of the indictment.

Then the indictment goes on, in Counts 2, 3, 4 and 5, to charge each of these defendants with violation of two separate provisions of the United States Code, on March 25, 1955, relating to the purchase, sale, dispensing and distribution, and facilitating the concealment and sale of narcotic drugs, heroin, a derivative of opium.

Each of these defendants is charged with having a part in the sale and facilitating the sale of these drugs in violation [fol. 380] of the two separate provisions of the United States Code which I shall explain to you shortly.

Now, to this indictment, each of these defendants has entered a plea of not guilty and thus each of these defendants puts in issue each and every essential element of the indictment and each and every count thereof.

The mere fact, members of the jury, that the defendants have been indicted and have been charged with a crime does not amount to evidence of guilt and is not to be taken as an indication of guilt, because an indictment is merely the procedure and the machinery by which a defendant is brought before the court and placed on trial. It is a rule of law that every defendant in a criminal case is presumed to

be innocent, and this presumption of innocence relates to every essential element of the offense, and attaches to him throughout the trial until overcome by legal evidence which establishes his guilt beyond a reasonable doubt.

It is also the law that the burden of proof is upon the Government to prove each of these defendants guilty beyond a reasonable doubt.

Now, proof beyond a reasonable doubt does not mean proof beyond all doubt whatsoever. It does mean proof to a moral certainty, not necessarily proof to an absolute or [fol. 381] mathematical certainty.

By "a reasonable doubt" is meant a doubt based on reason and not just on some whimsical speculation or capricious conjecture. If the evidence is as consistent with innocence as with guilt, or if the Government has merely proved that there is a strong probability that the fact charged is true, then the Government has not sustained this burden. If, however, after an impartial consideration of all of the evidence you can candidly and truthfully say to yourselves that you have an abiding conviction of the guilt of these defendants, such as you would be willing to act upon in the more weighty and important matters pertaining to your own affairs, then you have no reasonable doubt.

Now, the Government contends, members of the jury, that in the early morning hours of March 25, 1955, after receiving certain information from a narcotic user, one Clifford Reed, arrangements were made to have Reed assist in securing a purchase of narcotic drugs from these defendants whom the Government contends were associated together in the illicit traffic of narcotic drugs.

One hundred dollars in currency was marked and serialized. Contact was then made, the Government asserts, with the defendant Shepherd at 617 M Street, Northwest, in the District of Columbia, with Clifford Reed making the contact, [fol. 382] and accompanied by Agent Arthur Lewis.

The parties, according to the contention of the Government, drove to 1330 Vermont Avenue, where Lewis and Reed were requested to wait by Shepherd, until he returned with the "stuff" as he described it—meaning, in the vernacular, in the trade, narcotics;

That Shepherd proceeded to 1337 Columbia Road and after securing one hundred capsules of heroin, a derivative

of opium, from the possession of the other two defendants, Bessie Byrd and William Miller, and leaving marked one hundred dollars in bills with them, Shepherd got back in his taxicab on his way back to meet Lewis and Reed with the drugs in his possession;

That the taxicab was stopped and as the taxicab was stopped it is the Government's contention that the defendant Shepherd deposited these 100 capsules of heroin under the front seat of the taxicab where they were found by the officers.

The Government asserts that part of the marked money was found in the possession of the defendant Bessie Byrd and part of the marked money was found in the bed occupied by the defendant Miller;

That also in the premises occupied by these two defendants were found envelopes and empty capsules of the same [fol. 383] type and kind as the envelope and capsules which were discovered by the detectives in the taxicab; a thousand gelatin capsules in an empty box containing an envelope which was similar to the envelope in which the capsules were that were recovered by the officers;

It is further claimed by the Government that these drugs had no Government stamps upon them and were not from the original stamped package, as provided by law, and therefore the defendants are guilty, first, of conspiring to violate the narcotics laws, as alleged in Count 1 in the indictment, and that each of these defendants is guilty of a violation of two other provisions of the United States Code with reference to the sale and facilitating the concealment of narcotics.

That is the position of the Government briefly in this case.

Now, each of these defendants denies that he had, or she had, anything to do with the sale of narcotic drugs. The defendants have produced a witness, Octavia Walker, who states that she was in the premises at 1337 Columbia Road occupied by the two defendants Bessie Byrd and William Miller, and that Shepherd came to these premises at about three a. m. on March 25, 1955, and he had some money, and he counted it out in the amount of one hundred dollars;

[fol. 384] That he asked Bessie Byrd to keep it for him;

When he was asked how he had gotten the money, he stated he had won it in gambling.

The defendants deny selling or dispensing the drugs or having any connection whatever to do with it.

Now, this is the position briefly of the defendants in this case.

You can see that the two positions are irreconcilable; members of the jury, and it will be for you to resolve the conflict in the facts and after you have decided the facts, apply the law that the Court gives you, and bring in your verdict accordingly.

Although you have heard testimony as to 381 capsules in this case that were found in the furnace room at 1337 Columbia Road, Northwest, you should not consider this testimony in any way as you are considering the other counts in the indictment, because, as the Court previously indicated to you, those last two counts in the indictment are no longer in this case, Counts 6 and 7, relating to said 381 capsules, and therefore you should completely disregard whatever evidence has been presented with reference thereto.

The reason, as I stated before, for the Court withdrawing those two counts from your consideration was because the Court concluded there was no evidence to indicate [fol. 385] that the furnace room was in the possession of these two defendants.

Now, because the Court has withdrawn those two counts from your consideration, it is no indication as to how the Court feels about the other counts. You should not consider it in any way as indicating how the Court feels the other counts should be disposed of.

These, in the main, members of the jury, are the respective positions of the parties and the facts in this case.

As a part of its factual background, the Government relies on the oral admission of the defendant Shepherd who stated, according to the testimony, "Blue, it wasn't me who turned you around." It is proper for you to consider this so-called admission, with the admonition by the Court that any admission or confession should be received and considered by the jury with caution.

Now, first I should explain to you what is meant under the law by "conspiracy."

The conspiracy statute, United States Code, Title 18, Section 88, reads as follows:

444
If two or more persons conspire either to commit any offense against the United States or to defraud the United States in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each of the parties to the conspiracy then becomes guilty of the conspiracy statute."

A conspiracy is a combination by two or more persons to accomplish a criminal purpose by concerted action, that is, to commit a crime by concerted action.

In other words, a conspiracy is a partnership in crime. Conspiracies are created by an agreement to commit a crime. It is not necessary, however, to show that the persons charged with conspiracy met together and entered into a formal agreement. It is sufficient to show that they tacitly came to a mutual understanding to accomplish an unlawful design. Such an understanding need not be shown directly. Ordinarily a conspiracy is characterized by secrecy. The agreement may be inferred from circumstances, such as the conduct of the parties, and acts done by the accused persons. Such an agreement may be inferred from the fact that two or more persons are acting together in an endeavor to accomplish the unlawful result. Conspiracy to commit a crime is an offense separate and distinct from the crime itself.

In order to justify a conviction on a charge of conspiracy, two elements must be established by the Government beyond [fol. 387] a reasonable doubt:

First, that a conspiracy was created in the manner I have just indicated;

Second, that one or more of the conspirators did some act to effect the object of the conspiracy; that is, that one or more of the conspirators took some step in the direction of accomplishing the aim of the conspiracy. Such an act is known as an overt act.

The overt act need not be a criminal act. It may be an innocent act, standing by itself, but if it has a tendency to accomplish the purpose of the conspiracy, it is sufficient as an overt act.

It is sufficient to prove a single overt act, even though several overt acts may be alleged in the indictment.

It is not necessary, in order to convict a defendant on

a charge of conspiracy, that he shall have been a member of the conspiracy from the beginning. Different persons may become members of the conspiracy at different times. They may perform different parts in it. They need not be aware of all the ramifications of the conspiracy. If any defendant knew of the conspiracy and purposely took some part, large or small, in carrying it into effect, he becomes part and parcel of it and may be found guilty of conspiracy.

The fact that he may not have been in the conspiracy [fol. 388] at its inception or that he may have taken a minor part, or that he may not have known all of the conspirators, is immaterial, as is also the fact that he may have become a party to it at a later stage of its progress.

It has been said, members of the jury, that a conspiracy may be established by circumstantial evidence or by deduction from facts. The common design is the essence of the crime, and this may be made to appear when the parties steadily pursue the same object, whether acting separately or together, by common or different means, but ever leading to the same unlawful result.

If the parties acted together to accomplish something unlawful, conspiracy is shown, even though individual conspirators may have done acts in furtherance of the common unlawful design apart from and unknown to the others.

Although the conspirators need not be acquainted with each other, they may not have previously associated together; one defendant may not know but one other member of the conspiracy, but, if knowing that others have combined to violate the law, the party knowingly operates to further the object of the conspiracy, he becomes a party thereto.

Conspiracy may be likened to a wheel with a hub at the center and spokes radiating in all directions. A person may be connected with one spoke of the wheel, and know [fol. 389] of the existence of the hub without knowing anything about the other spokes. If, however, he is connected with one spoke of the wheel, and with the hub, that is, he knows of the existence of the conspiracy and does an act in furtherance of the conspiracy, he may be found guilty of conspiracy.

The fact that he may not know of the existence of other

spokes, that is, he does not know of other ramifications of the conspiracy, is immaterial.

You are further instructed, members of the jury, that one defendant's connection with a conspiracy cannot be established by the acts or declarations of other defendants in his absence, but each defendant's acts and declarations may be evidence of his own connection with the conspiracy, any conspiracy may be proved by the sum total of the independent declarations and acts of all alleged participants in the conspiracy. If the existence of a criminal conspiracy be first found by a jury, then and not until then may the acts or declarations of one member of such conspiracy pursuant to the concerted plan, and in furtherance of the common object, be considered as against the other conspirators.

In other words, if you find a conspiracy and if you find that a particular defendant is a member thereof, then you may consider as evidence against such member the declarations of his fellow-conspirators in or out of his presence [fol. 390] if they were made or done, in furtherance of the objects of the conspiracy and during its pendency.

This is because when conspirators join in a common plan or scheme to accomplish an illegal purpose, everything which is said or done by one of them in furtherance of the object of the conspiracy is deemed the statement or act of all who joined in the conspiracy. A statement made by one conspirator is not admissible against another conspirator if it is made after the ending of the conspiracy or if made during its pendency but not in furtherance of the conspiracy.

With reference to the other counts in the indictment, other than the conspiracy count, charging sale and facilitating the sale, then, as I previously instructed you, members of the jury, any statement made by one defendant not in the presence of the other defendants cannot be held against the other defendants.

Now, as to the two provisions of the United States Code which the Government claims each of these defendants violated, March 25, 1955:

The first provision provides:

"It shall be unlawful for any person to purchase, sell, dispense, or distribute any of certain drugs of

which heroin hydrochloride is one, except in the original stamped package or from the original stamped [fol. 391] package; and the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found."

The other provision of the United States Code, under which the other two counts in the indictment have been brought, provide that:

"If any person facilitates the concealment or sale of any such narcotic drug after being imported or brought into the United States, knowing the same to have been imported contrary to law, such person shall upon conviction be punished according to law, and it shall be a violation of that provision of the Code.

"Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

Now, every alleged violation of these laws may constitute an indictable offense, so that a person may be charged with one or more violations of the same law or a violation of both laws for one alleged transaction.

[fol. 392] In other words, these defendants may be found guilty on two counts under which they are charged; they may be found not guilty on the two counts; or they may be found guilty on one count and not guilty on the other.

I am talking now about the counts other than the conspiracy count.

You will observe that the law provides in the first provision of the law that I read to you, that it shall be unlawful to purchase, sell, dispense or distribute any of the drugs in the manner set forth.

These words "sell, dispense and distribute," are used disjunctively and it is sufficient if there is proof either of sale or dispensation or distribution.

Also under the second provision of the law—in con-

nection with the first provision that I read to you, it was stated that the absence of appropriate tax-paid stamps from any of the aforesaid drugs shall be prima facie evidence of a violation of this subsection.

Now, prima facie evidence means evidence which is sufficient to establish the facts, unless rebutted; evidence which standing alone and unexplained would maintain the proposition and warrant the conclusion to support which it is introduced.

And the second section of the law that I read to you [fol. 393] provides, "It shall be unlawful to facilitate the concealment or sale of any of the drugs mentioned."

Thus it is sufficient for the Government to prove beyond a reasonable doubt that it was either concealment or sale.

Now, there is a provision of the law, members of the jury, which says that in prosecution for any criminal offense, all persons advising or inciting or conniving at the offense, or aiding or abetting the principal offender shall be charged as principals. You are told that a person who advises, incites or connives in any offense, or aids or abets a principal offender is himself a principal offender under the law; whether or not he is personally present at the time of the offense.

In other words, such a person is just as responsible under the law as the person who commits a physical act which violates the law.

The word "connive" as used means to cooperate with.

The word "advise" to give an opinion or recommend a course of action;

the word "abet" means to encourage or incite another to commit a crime. A person aids and abets an offender when he assists him by words or acts. An aider and abetter is one who associates himself with the venture, [fol. 394] the criminal venture, and participates in it as something that he wishes to bring about.

If one who connives or aids or abets is not personally present at the time of the alleged offense, then it is necessary to prove facts and circumstances from which it might be inferred with reasonable certainty that the person accused of conniving, aiding and abetting, did connive, aid or abet in the performance of the criminal act in such

a way as to constitute him a principal offender under the law, to which I have just referred.

Now, the defendants or any of them have not taken the witness stand in their behalf in this case. A defendant in a criminal case under our law has the option of whether or not he should take the witness stand in his behalf. He has the privilege of taking the stand if he chooses to do so. He is under no obligation to testify if he chooses not to do so, and the law is that a jury must not draw any unfavorable inference against the defendant from the fact that he failed to take the witness stand.

Some mention has been made about the availability of a witness. It is the law that if a witness is not produced who is peculiarly available to one side or the other, then the jury has a right, if it wishes to do so, and it is entirely within the jury's discretion, to draw the inference that [fol. 395] the testimony of that witness would be unfavorable to the party that has failed to call the witness, unless the absence of the witness is sufficiently accounted for or explained.

No unfavorable presumption can be drawn against either the prosecution or the defendant by reason of failure to call certain witnesses where such witnesses were equally available to both sides.

Now, there will be just one form of verdict, written verdict, submitted to you members of the jury. It has spaces for each of the defendants covering each of the three counts with which they are charged in the indictment for you to write in the words "guilty" or "not guilty" under each of the three counts for each of the three defendants. You will have the blanks filled in, have it verified by your foreman or forewoman, have it dated and returned to this Court.

In considering this matter finally, members of the jury, in the light of the instructions I have given to you, you will use the same practical approach, the same ordinary common sense, and intelligence, that you would employ in determining any other important matter in your everyday experiences. Your verdict must be unanimous.

Upon reaching the jury room, you will first select your [fol. 396] foreman or forewoman who will preside over

your deliberations in the jury room and speak for you when you return your verdict to this Court.

Your decision should be reached impartially, without sympathy, passion, prejudice or emotion of any kind one way or the other.

Anything further?

Mr. Stevas: The Government is content.

Mr. Harris: May we approach the bench, Your Honor?

The Court: Very well.

(Thereupon counsel for the parties approached the bench, and in a low tone of voice conferred with the Court as follows:)

Mr. Harris: Your Honor, I was wondering if Your Honor would give the charge under the Codiaccus decision, if they find more than one conspiracy, they can acquit?

The Court: No.

Mr. Harris: I respectfully take exception to the Court's ruling and also, Your Honor, I would like for the record, if I may also take exception to Your Honor's charging the jury as to aiding and abetting inasmuch there was nothing in the case to connect the defendants with aiding and abetting.

The Court: That may be noted for the record.

[fol. 397] Mr. Harris: Thank you, Your Honor.

(Thereupon counsel resumed their places at the trial table.)

The Court: The two alternates are now excused. Thank you very much for your kind attention.

(Thereupon, at 2:48 o'clock p. m., the jury retired to deliberate of their verdict.)

The Court: I should note for the record that instead of dismissing the other two counts, the Court granted the motion for judgment of acquittal on the other two counts.

Mr. Stevas: Very well, Your Honor.

The Court: The record stands corrected.

(Whereupon, at 3:05 o'clock p. m., the jury returned with their verdict as follows:)

VERDICT

The Clerk: Mr. Foreman, has the jury agreed upon a verdict?

The Foreman: We have.

(A document was handed to the Clerk.)

The Clerk: Will the jury please rise:

United States of America versus Bessie Byrd, William Miller, and Arthur R. Shepherd Criminal Case No. 527-55.

"We, the jury, find the defendant Bessie Byrd guilty on Count 1 of the indictment, guilty on Count 2, guilty on [fol. 398] Count 3.

"We find the defendant William Miller guilty on Count 1 of the indictment, guilty on Count 2, guilty on Count 3.

"We find the defendant Arthur R. Shepherd guilty on Count 1 of the indictment, guilty on Count 4, and guilty on Count 5."

Signed, "Rocco F. Clements."

Dated the 23d day of June, 1955.

Members of the jury, that is your verdict so say you each and all?

(Affirmed by nods.)

The Court: Thank you very much, members of the jury, for your consideration of this case.

You are excused until Monday morning to report back at the usual time.

The defendants will be committed pending presentence investigation.

(Thereupon, the Court adjourned.)

[fol. 399] Reporters certificate to foregoing transcript omitted in printing.

[fol. 400]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Criminal No. 527-55

UNITED STATES

vs.

BESSIE BYRD, WILLIAM MILLER, ARTHUR R. SHEPHERD,
Defendants

VERDICT—Filed June 23, 1955

On the 23rd day of June, 1955, came again the parties aforesaid, in manner as aforesaid, the same jury as aforesaid in this cause; the hearing of which was respited yesterday; whereupon, after hearing further of the evidence, the oral motion of the defendant for a judgment of acquittal is by the Court granted as to the defendants Bessie Byrd and William Miller on Counts 6 and 7 of the indictment only, and denied as to all other counts; thereupon, after hearing arguments of counsel and the charge of the Court the alternate jurors are discharged; whereupon, the jury upon their oath say that the defendants Bessie Byrd and William Miller are each guilty as charged in Counts 1, 2 and 3 and that the defendant Arthur R. Shepherd is guilty as charged on Counts 1, 4 and 5.

The case is referred to the Probation Officer of the Court and the defendants are committed to the District of Columbia Jail.

By direction of Luther W. Youngdahl, Presiding
Judge Criminal Court # One, Harry M. Hull,
Clerk, by Carl A. Roser, Deputy Clerk.

Present: United States Attorney, by Alexander Stevas,
Assistant United States Attorney. Roger Frye, Official
Reporter.

[fel. 401]

[File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

MOTION FOR JUDGMENT N.O.V. AND/OR NEW TRIAL—Filed
June 28, 1955

Comes now the defendants, by and through their Attorneys, J. Leon Williams and W. Beasley Harris, and move this Honorable Court to grant a Motion for Judgment N.O.V. and/or New Trial and as reasons therefor state as follows:

1. The verdict was against the weight of the evidence.
2. The verdict was contrary to law and facts.
3. The Court erred in denying defendants motion to suppress.
4. The Court erred in its charge to the jury, which gravely prejudiced the defendants.

And for such other and further reasons as shall be urged orally on the hearing of this motion.

J. Leon Williams, W. Beasley Harris, Attorneys for
Defendants, 2000 9th Street, N. W., Washington,
D. C., HU 3-6350.

POINTS AND AUTHORITIES

1. Federal Rules of Criminal Procedure 29D.
Service of copies acknowledged this 28th day of June,
1955.

Leo A. Rover, vsd., United States Attorney.

[fols. 402-403] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

[Title omitted]

ORDER DENYING MOTION—June 29, 1955

On this 29th day of June, 1955, came the Attorney of the United States, the defendants in proper person, and by their counsel, J. Leon Williams, Esquire; whereupon, the motion of the defendants for judgment N.O.V. and/or for a new trial, coming on to be heard, after argument by counsel is by the Court denied.

The defendants are remanded to the District of Columbia Jail.

By direction of Luther W. Youngdahl, Presiding Judge, Criminal Court # One, Harry M. Hull, Clerk, by Paul A. Roser, Deputy Clerk.

Present: United States Attorney, by Alexander Stevas, Assistant United States Attorney. Roger Frye, Official Reporter.

[fols. 404-407] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Criminal No. 527-55

UNITED STATES OF AMERICA

v.

WILLIAM MILLER

On this 29th day of June, 1955 came the attorney for the government and the defendant appeared in person and by counsel, J. Leon Williams, Esquire.

¹ Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

JUDGMENT AND COMMITMENT—June 29, 1955

It is adjudged that the defendant has been convicted upon his plea of ² not guilty and a verdict of guilty of the offense of Violation of Section 371, Title 18; Section 4704a, Title 26; and Section 174, Title 21 of the United States Code as charged ³ in Counts 1, 2 & 3 and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ One (1) year to Four (4) years on Count 1; Thirty (30) months to Eight (8) years and to pay a fine of \$500.00 on Count 2 to take effect at the expiration of the sentence imposed on Count 1; Thirty (30) months to Eight (8) years and to pay a fine of \$500.00 on Count 3 to take effect at the expiration of the sentence imposed on Count 2.

It Is Adjudged that ⁵ the execution of the said sentence be, and hereby is suspended insofar as the payment of the said fine is concerned, only.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Mar-

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

³ Insert "in count(s) number" " if required.

⁴ Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

⁵ Enter any order with respect to suspension and probation.

shal or other qualified officer and that the copy serve as the commitment of the defendant.

Luther Youngdahl, United States District Judge.

[fol. 408-411] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
COLUMBIA

Criminal No. 527-55

UNITED STATES OF AMERICA

vs.

WM. MILLER

NOTICE OF APPEAL.—Filed July 11, 1955

Name and address of appellant: William Miller, District Jail.

Name and address of appellant's attorney: J. Leon Williams, 2000 9th St., N. W., D. C. Wm. B. Harris, % Howard Univ. Law School, D. C.

Offense: Viol. Harrison Narcotic Act.; Concise statement of judgment or order, giving date, and any sentence. Guilty, counts 1, 2, 3. Sentenced June 29, 1955. 1-4 yrs. on Count 1. 30 mos. to 8 yrs. on Count 2, consecutive to Count 1. 30 mos. to 8 yrs. on Count 3, consecutive to Count 2. \$500.00 fine (suspended).

Name of institution where now confined, if not on bail: District Jail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

William Miller, Appellant. J. Leon Williams, Attorney for Appellant.

Date: July 11, 1955.

[fols. 412-413] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, APRIL TERM, 1955.

Criminal 527-55

No. 12,842

WILLIAM MILLER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Before Wilbur K. Miller, Acting Chief Judge, in Chambers

ORDER EXTENDING TIME TO FILE—August 19, 1955

Upon consideration of appellant's motion for an extension of time within which to file the record on appeal herein, and it appearing that appellee has not filed objections thereto, it is

Ordered that the time for filing the record on appeal herein be, and it is hereby, extended to and including September 10, 1955. No further extensions of time to file the record will be granted except upon extraordinary cause shown.

Dated: August 19, 1955.

[fol. 414]

[File endorsement omitted]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, APRIL TERM, 1955

Criminal 527-55

No. 12,783

ARTHUR R. SHEPHERD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,842

WILLIAM MILLER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,843

BESSIE BYRD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Before Bazelon, Acting Chief Judge, in Chambers

ORDER EXTENDING TIME TO FILE—September 19, 1955

Upon consideration of appellants' motion for an extension of time within which to file the transcript of record herein, and it appearing that no objections have been filed thereto, it is

Ordered that the time for filing the transcript of record in the above entitled cases be, and it is hereby, extended to and including October 10, 1955.

Dated: September 19, 1955.

[fols. 415-417] Clerk's Certificate to foregoing transcript omitted in printing.

[fol: 418] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, OCTOBER TERM, 1955

No. 12,783

ARTHUR R. SHEPHERD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,842

WILLIAM MILLER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,843

BESSIE BYRD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Before: Edgerton, Chief Judge, in Chambers.

ORDER EXTENDING TIME TO FILE—October 26, 1955

Upon consideration of appellants' motion for leave to docket the record in the above entitled case, time therefor having expired, and it appearing that no objections to said motion have been filed, it is

Ordered that the time within which appellants may file the record in the above entitled case be, and it is hereby, extended to and including October 29, 1955. No further extensions of time to file the record on appeal in the above entitled case will be granted except upon extraordinary cause shown.

Dated: October 26, 1955.

[fol. 419] IN UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

No. 12,783

ARTHUR R. SHEPHERD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,842

WILLIAM MILLER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

No. 12,843

BESSIE BYRD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee

Appeals from the United States District Court for the
District of Columbia.

Mr. D. A. St. Angelo (appointed by this Court), with
whom Mr. Garner J. Cline was on the brief, for appellants.

Mr. Fred L. McIntyre, Assistant United States Attorney,
with whom Messrs. Oliver Gasch, United States Attorney,
[fol. 420] and Lewis Carroll and Alexander L. Stevas, As-
sistant United States Attorneys, were on the brief, for
appellee. Mr. Leo A. Rover, United States Attorney at
the time record was filed, also entered an appearance for
appellee.

OPINION—Decided October 18, 1956

Before EDGERTON, Chief Judge, and WILBUR K. MILLER
and DANAHER, Circuit Judges.

DANAHER, Circuit Judge: A first count charged Shep-
herd, Bessie Byrd and William Miller with conspiracy to
violate the narcotics laws, and all were convicted. Shep-
herd also was charged with the purchase and distribution

of 100 capsules of heroin and with facilitating the concealment and sale of the same. The jury found him guilty on all three counts, and he appeals, his argument suggesting that evidence of conspiracy was insufficient, that he was entrapped, and that officers lacked probable cause to stop a taxicab in which he was riding, to arrest him and incidentally to the arrest, to recover from the cab the 100 capsules of heroin as mentioned.

After the arrest of Shepherd, the officers, having found the 100 capsules of heroin, immediately went back to the apartment occupied by Mrs. Byrd and Miller, and, a few minutes later, knocked on the door and announced their identity. Thereupon Miller, known to the officers as a narcotics violator, having opened his door part way, recognized the officers of the narcotics squad and attempted to close the door. As he pulled the door to, the officers resisted his effort to close it, a chain bolt broke, and the officers arrested Miller and Mrs. Byrd. The latter produced some \$700 in bills from her housecoat pocket, among which were \$34 in marked bills. The further sum of \$66 in marked bills which Shepherd had turned in for the heroin, was found in the bed-clothing. In the two-room apartment also were found empty capsules and envelopes, and across the hall, in a furnace room, were 381 capsules of heroin, 1,000 empty capsules, a supply of envelopes and paraphernalia for "cutting" or diluting heroin with sugar of milk. Two counts, dealing with the items found in the furnace room were dismissed, as Judge Youngdahl decided the Government had not sufficiently proved possession of the furnace room and its contents to be attributable to Mrs. Byrd and Miller. However, the jury found them guilty with Shepherd on the conspiracy count as well as on two substantive counts, one of sale, and the other of facilitating the sale and concealment of heroin. They urge that evidence of conspiracy was insufficient, that the trial judge erred in instructing the jury as to "aiding and abetting," that the prosecutor indulged in prejudicial argument, and that the court erred in denying their motion to suppress the use in evidence of the marked money found in the Byrd-Miller apartment.

First, as to Shepherd, there was no entrapment in the sense that a criminal design, created by government of-

ficers, resulted in implanting in the mind of an innocent person, the disposition to commit an offense which was thus induced that prosecution might follow. Rather, the case comes squarely within the rule which is "well settled that the fact that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises."¹ Shepherd was a "contact" man or runner for Byrd and Miller, making outside sales from a source controlled by the other two appellants who received the proceeds of the sales so effectuated.

After Shepherd's arrest, he was brought back to the Miller-Byrd apartment, where he informed Miller "Blue," it wasn't me that turned you around." Although only 17 years of age at the time, Shepherd was already steeped in the code of the underworld after a pattern familiar to [fol. 422] the courts, as that remark, coupled with his other conversations with the police clearly showed. That he was linked to the whole nefarious enterprise can not be doubted.

Again, as to Shepherd, there was no possible question as to probable cause. Officers with a warrant for the arrest of one Reed, an addict, had apprehended Reed at 1:35 A. M. on March 25, 1955. Taken to headquarters and questioned as to his source of supply, Reed disclosed the name of Shepherd, not previously known to the officers, as one who on occasion had purveyed to him narcotics in 100 capsule lots, at \$1 per capsule, he said. Shepherd picked up such narcotics from "Blue" Miller in Apt. #1 at 1337 Columbia Road, N.W., in the District of Columbia, he added. He agreed to join a trainee agent named Lewis in arranging for such a purchase, and \$100 in marked bills were supplied for the purpose. Reed and Lewis in a cab, trailed by officers, went to 617 M Street where "Blue" Miller's mother lived and where Reed said Shepherd could be located. Reed entered 617 M Street and soon returned with Shepherd who joined Lewis and Reed. The cab then went to Reed's home. It had been prearranged that if Lewis and Reed left the cab at Reed's home, the trailing

¹ Sorrells v. United States, 287 U.S. 435, 441 (1932).

² Miller's nickname.

officers were to understand that Shepherd had received the \$100 in marked bills and had gone on alone to his source of supply. The officers, alerted by the enactment of this signal, followed the cab in which Shepherd was a passenger, directly to 1337 Columbia Road, N.W. Shepherd went into the basement entrance. Agent Wilson followed him down to the lighted hallway, saw two doorways opening off the hall, one leading to a furnace room across the hall from the entrance to apartment #1, and noted Shepherd had disappeared. Retracing his steps, Agent Wilson took up watch from across the street and saw a light appear for a short time in the furnace room, after which the light was [fol. 423] turned off and Shepherd reappeared. He reentered his waiting cab which proceeded a short distance only to be stopped by Officer Wurms who directed a flash-light into the driver's face. Taxi driver Hoban testified he then said "This must be the police," or some such statement, whereupon he got out. As he opened the cab door, its dome light came on. Shepherd, on notice by the driver's remark if not otherwise, was seen to place a package under the front seat where he was riding. His door was opened then, an officer reached in, found a manila envelope containing 100 capsules which on field test reacted to disclose the presence of narcotics. Shepherd then was searched, the \$100 which had been given to him by Lewis and Reed were not found, and Shepherd said he had picked up the narcotics from behind a fire extinguisher in the basement hallway at 1337 Columbia Road.

That these facts spelled out probable cause to arrest Shepherd cannot be doubted. Shepherd did not deny one iota of the testimony which established the commission of the offense in the presence of the officers. His own statement putting him in the very place where the information of the officers attributable to Reed indicated he would go, together with what the officers had observed and the plan which was in process under their surveillance, brought the case squarely within the Court's ruling in the *Scher* case,³ and our own *Shettel* case.⁴

³ *Scher v. United States*, 305 U.S. 251 (1938).

⁴ *Shettel v. United States*, 72 App. D.C. 250, 113 F. 2d 34 (D.C. Cir. 1940).

Moreover, viewing the case as a whole, neither Shepherd nor his co-accused were helped when the only defense testimony identified him as a brother of Mrs. Byrd who admitted Shepherd to the apartment that morning. Both Miller and Mrs. Byrd denied to the officers that Shepherd had been at their apartment, but at the trial, a different version developed. The only defense witness, Octavia [fol. 424] Walker, said she and another woman and Mrs. Byrd, sometime after 1 A.M. went to a night club for drinks. Returning after 2 A.M. to the Byrd-Miller apartment, she said Miller was asleep, and the three women went into the kitchen to fix a "snack." About 2:30 A.M. Shepherd appeared, came into the kitchen and handed his sister \$100 for "safe-keeping," saying it was money he had won gambling. After a brief stay, Shepherd left. Shepherd, even by the defense, had definitely been placed in the apartment with Miller and Mrs. Byrd and with \$100 which he left there. Perhaps neither judge nor jury believed he won the money gambling.

There is no substance to the claimed errors with reference to the conspiracy or the instruction as to "aiding and abetting." There was no merger of the substantive offenses, indeed, they were separate and distinct, while the general agreement among the appellants was clearly deducible from the evidence and could be deemed to be continuous and persisting.⁵

Nor is there merit to the claim that the argument by Government counsel so prejudiced the appellants that a fair trial was denied. Not only was there a current failure then to object, but upon review we are satisfied there was no error.⁶

What has been or will be said as to the facts will make clear that there is only one question in this case. Miller and Mrs. Byrd in advance of trial moved to suppress the use of the marked money, claiming it had been illegally seized. The seizure in turn depends upon the validity of their arrest. The supporting affidavit offered by these two appellants recited in part:

⁵ Pinkerton v. United States, 328 U.S. 640, 643, 646 (1946).

⁶ Cf. Obery v. United States, 95 U.S. App. D.C. 28, 217 F. 2d 860 (D.C. Cir. 1954), *cert. denied*, 349 U.S. 923 (1955).

"That at about four (4) o'clock, A.M., on the morning of March 25, 1955, they were awakened in their [fol. 425] apartment, located at Columbia Road, N.W., Washington, D.C., by the noise created by someone breaking in a doorway in the hallway, leading to their apartment (only), and that upon his cracking * his door (with a chain thereon), to ascertain the origin of said noise, that officers Wilson, Pappas and four others did break the chain off of the door, and forcibly enter his apartment."

Just what happened in exact detail at the doorway to apartment #1 and precisely what was said by the respective participants cannot be determined conclusively from the record before us.⁷ The whole episode must have involved only a few seconds. At the hearing on the motion, the only witnesses called, Officer Wurms and Agent Wilson, testified that Officer Wurms knocked on Miller's door, and when a voice from inside asked "Who's there?", Wurms answered, "Blue, police." Miller opened the door and looked out. The officers immediately recognized him and Miller recognized them. "Did he say anything when he opened the door?" "Yes, sir, he didn't want to let us in." "What were his words?" "I can't recall, *but he wanted to know what we were doing there.*" Miller tried to close the door. Officer Wurms tried to keep it open. "He took one look at me and tried to slam the door, at which time I grabbed the door and opened it." The door was not broken, but a door chain was.

The judge observed that he could only "consider what happened before the search took place."

"The Court: When did you arrest these two defendants?"

* taken to mean "opening part way."

⁷ For example, at the trial Agent Wilson on cross-examination testified that Officer Wurms knocked at the door and said: "Blue, open the door, police." A voice inside asked "Who's there?" The knock was repeated, and again the officer said "Blue, open the door, police." That was all that was said until Miller opened the door, looked out, saw who was there, and refused to let the officers enter.

[fol. 426] The Witness [Wilson]: Immediately upon entering the place."

Announcing his decision pursuant to Rule 41(e)⁸ Judge Holtzoff said:

"The Court is of the opinion that there is ample proof of probable cause to make an arrest, and therefore the arrest was legal. The arrest being legal, the search was legal because it was incidental to the arrest."

This is precisely what we said in the *Shettel* case, *supra* note 4. Indeed, from ancient times, it is to be doubted that anyone has seriously denied "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime. This right has been uniformly maintained in many cases. [Citing cases] . . ." and may be deemed to extend to "proofs of guilt found upon his arrest within the control of the accused."⁹ So, as incidental to a valid arrest, at least a limited search, not general or exploratory, for specific evidence may be sustained.¹⁰ Again, "exceptional circumstances" can be a factor.¹¹

[fol. 427] In *United States v. Jeffers*¹² there were no "exceptional circumstances"; no one was present, the hotel room could have been guarded while a warrant was pro-

⁸ FED. R. CRIM. P.

⁹ *Weeks v. United States*, 232 U.S. 383, 392 (1914). And see *Morton v. United States*, 79 U.S. App. D.C. 329, 147 F. 2d 28 (D.C. Cir. 1945); *cert. denied*, 324 U.S. 875 (1945); *Beard v. United States*, 65 App. D.C. 231, 82 F. 2d 837 (D.C. Cir. 1936), *cert. denied*, 298 U.S. 655 (1936); cf. *Harris v. United States*, 331 U.S. 145, 154 (1947) and the cases appended to Mr. Justice Frankfurter's dissent at 174 *et seq.*

¹⁰ *United States v. Rabinowitz*, 339 U.S. 56, 62 (1950), which, incidentally, overruled *Trupiano v. United States*, 334 U.S. 699 (1948), at least in part.

¹¹ *Johnson v. United States*, 333 U.S. 10 (1948).

¹² 342 U.S. 48, 51 (1951).

cured, there was no arrest "or imminent destruction, removal, or concealment of the property intended to be seized." The Government admitted that the search was unlawful; the Court described the intrusion as "by means denounced as criminal."¹³

In the *Johnson* case, *supra* note 11, the Government, in effect, conceded:

" . . . that the arresting officer did not have probable cause to arrest the petitioner until he had entered her room. . . . It was therefore their observations inside of her quarters, after they had obtained admission under color of their police authority, on which they made the arrest.

"Thus the Government is obliged to justify the arrest by the search and at the same time to justify the search by the arrest. This will not do."¹⁴

In *McDonald v. United States*¹⁵ the activities of the accused were under surveillance for some two months. Here the conspiratorial actions had evolved within a matter of an hour or two and were still current. There, again unlike the present case, the officers were responding to no emergency; and the officers gained access to their vantage point "by means that were not inereely unauthorized but by means that were forbidden by law and denounced as criminal."¹⁶

[fol. 428] Here, as in *United States v. Rabinowitz*, *supra* note 10, we may say, with the Court: "Of course, a search without warrant incident to an arrest is dependent initially upon a valid arrest. . . . Even if the warrant of arrest were not sufficient to authorize the arrest for possession of the stamps, the arrest therefor was valid because the officers had probable cause to believe that a felony was being committed in their very presence."¹⁷ Probable

¹³ *Id.* at 52.

¹⁴ 333 U.S. at 16-17.

¹⁵ 335 U.S. 451 (1948).

¹⁶ As Justice Jackson explained, *id.* at 458. And see *Nueslein v. District of Columbia*, 73 App. D.C. 85, 115 F. 2d 690 (D.C. Cir. 1940).

¹⁷ 339 U.S. at 60.

cause depends upon a reasonable ground for belief of guilt,¹⁸ which surely was shown here. Moreover, the District of Columbia Code (1951) expressly confers the necessary "power and authority"¹⁹ to arrest without warrant in felony cases.

In *Mattus v. United States*²⁰ the informant under the eyes of the officers, pursuant to plan and with marked money, entered the defendant's house to purchase narcotics. He shortly returned and handed packages of morphine to the officers. They then entered the house and arrested the accused. "Here there can be no doubt but that the officers had knowledge that some person in the house had committed a felony, and they had reasonable and probable cause to believe that the person who committed it was continuing in the commission of an offense by unlawfully retaining possession of morphine."²¹ It was claimed the officers had illegally entered the house. After ringing the bell and knocking on the front window, one called out, "Open up; federal officers; narcotic officers." Meeting no response, they forced an entrance and rushed to the back of the house, where they caught the [fol. 429] defendant in the act of disposing of the money and narcotics in the toilet. The court ruled: "The defendant's house was entered, pursuant to the officers' knowledge that a felony had been committed therein, and the reasonable ground which they had to believe that a felony was being committed in the unlawful retention of morphine, and that probably a further offense was about to be committed in the concealment of morphine. Such breaking and entry were permissible. Wharton's Crim. Procedure (10th Ed.) § 51."²²

Here, under much stronger circumstances in the light of the facts of record, was a continuing conspiracy in which Shepherd, aged 17, residing in Miller's mother's house, was being used by Miller and his own sister, Mrs.

¹⁸ *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

¹⁹ D. C. CODE §§ 4-140, 141 (1951); and see *Shettell v. United States*, *supra* note 4.

²⁰ 11 F. 2d 503 (9th Cir. 1926).

²¹ *Id.* at 504.

²² *Ibid.*

Byrd, to assist them in carrying on their nefarious business which was being operated out of their apartment. The events of the sale, as previously narrated, confirmed in every detail the method of operation described by Reed as having occurred on previous occasions, and executed by known narcotics violators with a previous record of conviction.

In the *Agnello* case,²³ there was no arrest at the door of the Alba home. The officers looking through a window saw the informant hand over money to Alba. They saw small packages on a table, but did not know what they contained. Of course, they suspected narcotics were being sold.²⁴ The "agents rushed in and arrested all the defendants. . . . On searching Alba, they found the money given him by Napolitano. [the informer]."²⁵ (Emphasis supplied.)

[fol. 430] "The legality of the arrests or of the searches and seizures made at the home of Alba is not questioned."²⁶ (Emphasis supplied.) The conviction of all accused as conspirators, engaged then and there in Alba's house in carrying on the conspiracy, was affirmed, clearly and solely on the ground that the officers had probable cause to "rush in" and arrest for a felony which they had reasonable cause to believe had been committed.²⁷ A new trial was granted to Agnello only as to cocaine found in his home as a result of an unauthorized search and seizure there made in his absence.

Against the background of the facts as noted and the law as summarized, we find the officers at Miller's door, knowing that a felony had been committed and having probable cause to believe it was continuing. The statute spelled out their clear duty to arrest.²⁸ This is not a case where to make the arrest, the officers "rushed in,"

²³ *Agnello v. United States*, 269 U.S. 20 (1925).

²⁴ Here, the officers knew to a certainty for they had already made their test.

²⁵ *Agnello v. United States*, *supra* note 23, 269 U.S. at 29.

²⁶ *Id.* at 30. ✓

²⁷ See *Mattus v. United States*, *supra* note 20.

²⁸ D. C. CODE § 4-143 (1951).

as in *Agnello*, *supra* note 23, or "forced an entrance" without response from within, as in *Mattus*, *supra* note 20, where the seizures in the premises of arrest were sustained; nor is it like *McKnight v. United States*,²⁹ where the officers broke in after rejecting a convenient present opportunity to make a lawful arrest in a public street, nor yet like *Accarino v. United States*³⁰ where the officers actually broke down the door although they had no evidence that the premises had been or were being used in the commission of a felony. Moreover, there they had had the accused under surveillance for many days and had had ample opportunity to secure a search warrant but had failed to do so. As Judge Edgerton wrote [fol. 431]) in the *McKnight* case,³¹ applying the *Accarino* principle, and quoting:

" 'It would appear that the officers deliberately let him get to his own front door before they attempted to approach. If thereafter there was a semblance of emergency requiring the breaking of the door, it was created by the officers.' Neither policemen nor private citizens can justify breaking into a house, or other violence, by deliberately creating an alleged necessity for it. Since McKnight's arrest was accomplished by a needless and violent invasion of a private house, it was illegal, particularly since the real purpose of the invasion was not an arrest but a search."

We suggest no impairment of the validity of the holdings in the *McKnight* and *Accarino* cases. The instant case is unlike both, is clearer and stronger, and quite within the principles taught. Judge Prettyman pointed out that the law had been summed up thus:

" 'Before doors are broken, there must be a necessity for so doing, and notice of the authority and purpose to make the arrest must be given and a demand

²⁹ 87 U.S. App. D.C. 151, 183 F. 2d 977 (D.C. Cir. 1950).

³⁰ 85 U.S. App. D.C. 394, 179 F. 2d 456 (D.C. Cir. 1949).

³¹ *Supra* note 29, 87 U.S. App. D.C. at 152, 183 F. 2d at 978.

and refusal of admission must be made, *unless this is already understood*, or the peril would be increased.' ³²
(Emphasis supplied.)

He expressly noted "Unless the necessities of the moment require that the officer break down a door, he cannot do so without a warrant . . ." ³³ and in *Accarino*, there was no claim that the officers advised the suspect of the cause of their demand before they broke down the door. It does not appear that the accused knew that the police had been following him for days or that he was suspected of complicity in the handling of numbers bets in various other places, much less his own house.

Here the accused himself opened the door. He had heard the officers knock, had heard their identification of him and of themselves, and he responded to their summons. That he was alerted by his experience in his business and by the events so recently transpiring and still in progress is not to be doubted. A previous violator, he knew at least some of the narcotics officers named by him in his affidavit—"He took one look at me and tried to slam the door. . . ."—Without more than brief further reference to the evidence, upon the sum total of what must have flashed through his mind, that he recognized the officers instantly as the narcotics squad may fairly be inferred. While we do not have his exact words in the record, there was talk among them, and "He wanted to know what we were doing there." He then offered resistance and tried to close the door. He may have hoped to gain time to escape through the apartment. He knew Shepherd had brought in the money and could have realized from his experience that it was marked. He may have hoped to destroy all the marked money. Certainly \$66 had already been concealed in his bed, and as it developed later, Mrs. Byrd had \$34 of it among other bills totalling over \$700 which she produced from her pocket upon request. He knew that Shepherd had left the apartment only minutes before with 100 capsules of narcotics, carried out by him for sale in furtherance of

³² 85 U.S. App. D.C. at 401, 179 F. 2d at 463.

³³ 85 U.S. App. D.C. at 402, 179 F. 2d at 464.

the narcotics traffic being conducted from his quarters.³⁴ That he already fully understood who the officers were and that they sought to arrest him cannot be doubted. Certainly the exact course to be taken by the officers in [fol. 433] a split second of resistance was not the subject of a blueprint.

The officers were not confronted with a decision as to getting a warrant next day to arrest Miller and Mrs. Byrd. The arrest of Shepherd by itself would have put such hardened narcotics traffickers on notice to destroy whatever evidence there was of their complicity in the enterprise. The officers were confronted by the need for a decision arising from the necessitous circumstances of the situation. The District judge had to decide whether or not the conduct of the officers was reasonable, not whether some other course would have been better.

As Judge Washington wrote:

"To have left appellant at large in the house while one or both of the officers went to obtain an arrest warrant and a search warrant might perhaps be said to have been reasonable also, in spite of the risk of escape and destruction of evidence which that course would have entailed; but we certainly cannot say that the course which the officers did take was either unreasonable or forbidden by law. 'The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable. That criterion in turn depends upon the facts and circumstances—the total atmosphere of the case.' *United States v. Rabinowitz* [citation]. Here the total atmosphere—the total situation—~~is~~ such as to lead us to sustain the officers' action."³⁵

The trial judge did not err in concluding that the attempt of the officers to arrest Miller at his doorway un-

³⁴ He certainly was not in the category of Nueslein who "was not a bootlegger or a gambler *schooled in resistance to law*." (Emphasis supplied.) *Nueslein v. District of Columbia*, *supra* note 16, 73 App. D.C. at 89, 115 F. 2d at 69.

³⁵ *Ellison v. United States*, 93 U.S. App. D.C. 1, 4, 206 F. 2d 476, 479 (D.C. Cir. 1953).

der the circumstances of this case was not unreasonable. The fact that his door chain was broken in the course of his resistance is immaterial and his arrest, immediately made, was justified. It follows that the limited specific search was lawful, and the marked bills were properly [fol. 434] received in evidence. The proof of the guilt of Miller and Mrs. Byrd was thus overwhelming and unanswerable.

The convictions in both appeals are affirmed.

EDGERTON, *Chief Judge*, dissenting: Officers arrested Clifford Reed, for whom they had a warrant, about 1:35 a.m. March 26, 1955. He told them he had been buying narcotics from appellant Shepherd who got them from appellants Miller and Byrd. The police arranged with Reed that he would make a purchase from Shepherd. About 3 a.m. Reed, in the presence of a narcotics agent, handed Shepherd marked money which the agent supplied. Under police surveillance, Shepherd then went to 1337 Columbia Road N.W. and entered the basement. After he came out and got into a cab, the police stopped it and saw him put something under its front seat. They found narcotics there, and also found that Shepherd no longer had the marked money.

The officers then went to the basement apartment at 1337 Columbia Road, which was occupied by appellants Miller and Byrd. One of the officers testified: "Officer Wurms knocked on the door and a voice from inside asked 'Who is there?' Officer Wurms repeated the name 'Blue,' called 'Blue' [a name by which Miller was known]. Then he said in a very low voice, 'Police'. The door was opened slightly, and it had a chain lock on it, and as the door was opened the man looked around the door, he tried to close the door. . . . he didn't want to let us in. . . . We forced the door open and forced our way into the room. . . . I believe the chain latch on the door was broken." The officers immediately arrested Miller and Byrd in the apartment. They took some of the marked money from Byrd, searched the apartment, and found the rest of the money.

Miller and Byrd moved to suppress the money as evidence. [fol. 435] The motion was overruled. Shepherd, Miller, and Byrd were all tried together and convicted.

In my opinion the search of the apartment was illegal and the motion to suppress should have been granted. The officers had no warrant of any sort. In my opinion they had no sufficient reason to suppose the evidence, which was money, would be destroyed if they waited till morning and got a warrant. "Where, as here, officers are not responding to an emergency, there must be compelling reasons to justify the absence of a search warrant." *McDonald v. United States*, 335 U.S. 451, 454.

The arrests of Miller and Byrd do not excuse the search. "Of course, a search without warrant incident to an arrest is dependent initially on a valid arrest." *United States v. Rabinowitz*, 339 U.S. 56, 60. The arrests of Miller and Byrd were illegal for two reasons, even if the officers had probable cause to believe them guilty. (1) "Unless the necessities of the moment require that the officer break down a door, he cannot do so without a warrant; and if in reasonable contemplation there is opportunity to get a warrant, or the arrest could as well be made by some other method; the outer door to a dwelling cannot be broken to make an arrest without a warrant. The right to break open a door to make an arrest requires something more than the mere right to arrest. If nothing additional were required, a man's right of privacy in his home would be no more than his rights on the street; and the right to arrest without a warrant would be precisely the same as the right to arrest with a warrant. The law is otherwise." *Accarino v. United States*, 85 U.S. App. D.C. 394, 402, 179 F. 2d 456, 464. *McKnight v. United States*, 87 U.S. App. D.C. 151, 152, 183 F. 2d 977, 978. (2) Just as in *Accarino*, the officers did not make known their reason for demanding entry but merely identified themselves as police. One of the officers testified that Miller "wanted to know what we were doing there," but it does not appear that they answered the question. I find no evidence, and the court cites no evidence, that supports an inference that Miller even recognized the officers as the narcotics squad. As we held in *Accarino*, "Before an officer can break a door

I do not suggest that if he had recognized them they would have been relieved of the obligation to make known the cause of their demand for entry.

to a home, he must make known the cause of his demand for entry. There is no claim . . . that the officers advised the suspect of the cause of their demand before they broke down the door. Upon that clear ground alone, the breaking of the door was unlawful, the presence of the officers in the apartment was unlawful, and so the arrest was unlawful." 85 U.S. App. D.C. at 403, 179 F. 2d at 465. *Gatewood v. United States*, 93 U.S. App. D.C. 226, 209 F. 2d 789.

The denial of the motion of Miller and Byrd to suppress the illegally seized evidence was error that was prejudicial to Shepherd as well. His conviction as well as theirs should therefore be reversed. *McDonald v. United States*, 335 U.S. 451, 456.

[fol: 437] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA CIRCUIT, APRIL TERM, 1956

Criminal 527-55

No. 12,783

ARTHUR R. SHEPHERD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

12,842

WILLIAM MILLER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

No. 12,843

BESSIE BYRD, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

Appeals from the United States District Court for the
District of Columbia.

Before: Edgerton, Chief Judge, and Wilbur K. Miller
and Danaher, Circuit Judges.

JUDGMENT—October 18, 1956

These cases came on to be heard on the record from the
United States District Court for the District of Columbia,
and were argued by counsel.

On consideration whereof, it is ordered and adjudged by
this Court that the judgments of the said District Court
appealed from in these cases be, and the same are hereby,
affirmed.

Dated: October 18, 1956.

Per Circuit Judge Danaher.

Separate dissenting opinion by Chief Judge Edgerton.

[fols. 438-444] Petition for rehearing covering 5 pages filed November 19, 1956 omitted from this print. It was denied, and nothing more by order December 3, 1956.

[fols. 445-446] IN UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

[Title omitted]

Before: Edgerton, Chief Judge, Prettyman, Wilbur K. Miller, Bazelon, Fahy, Washington, Danaher, Bastian and Burger, Circuit Judges, in Chambers.

ORDER DENYING PETITION FOR REHEARING—December 3, 1956

Upon consideration of appellants' petition for a rehearing en banc, it is

Ordered by the Court that the aforesaid petition be, and it is hereby, denied.

Per Curiam.

Dated: December 3, 1956.

Circuit Judges Washington and Burger did not participate in the foregoing order.

[fol. 447] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 448] SUPREME COURT OF THE UNITED STATES

[Title omitted]

On petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

ORDER GRANTING MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND PETITION FOR WRIT OF CERTIORARI—May 13, 1957

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of

certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 998.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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JOHN T. PEY, Clerk

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 126

WILLIAM MILLER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 126

WILLIAM MILLER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

There was no opinion in the District Court.

The affirmance in the United States Court of Appeals for the District of Columbia Circuit was by a divided Court. Danaher, *C.J.* wrote the prevailing opinion in which

Miller, *C.J.* concurred (R. 238). Edgerton, *Ch.J.* wrote the dissenting opinion (R. 251). These opinions are reported at 244 F.2d 750 and are also printed at pages 238 to 253 of the printed record herein.

Jurisdiction

The judgment of the United States Court of Appeals for the District of Columbia Circuit was entered October 18, 1956 (R. 254). The petition for rehearing *in banc* was denied by the Court of Appeals by order entered December 3, 1946 (R. 255). The petition for writ of certiorari was filed within thirty days thereafter and was granted May 13, 1957; 1 L.Ed. 2d 908 (R. 255).

Jurisdiction of this Court is invoked under Rule 37 (b) of the Rules of Criminal Procedure and Title 28, Section 1254 United States Code.

Constitutional Provision Involved

The Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Statutes Involved

Title 18, Section 3109 United States Code provides:

Breaking Doors or Windows For Entry Or Exit.

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after

notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. (June 25, 1948, ch. 645, par. 1, 62 Stat. 820.)

Title 18, United States Code, Section 371 provides:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

Title 26, United States Code, Section 4704a (formerly Section 2553) provides:

It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and in the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

Title 21, United States Code, Section 174, in pertinent part, provides:

Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law; or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit any such acts

in violation of the laws of the United States, shall be fined not more than \$2,000 and imprisoned not less than two or more than five years. For a second offense, the offender shall be fined not more than \$2,000 and imprisoned not less than five or more than ten years. For a third or subsequent offense, the offender shall be fined not more than \$2,000 and imprisoned not less than ten or more than twenty years. * * *

Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

Questions Presented

I.

Where agents and officers not responding to an emergency, without a warrant of any sort and without notice of their purpose, break the door of a suspected felon to search his premises for evidence (marked money) and to arrest him, is evidence seized as a result admissible in a federal criminal trial?

II.

Must requirement of 18 U.S.C. 3109 that an officer seeking entry to premises to execute a search warrant must give notice of his purpose before breaking a door to gain entry, be also observed by an officer seeking admittance to premises without a warrant to search for evidence and to arrest a suspected felon?

Statement

Petitioner was tried in the District Court along with co-defendants Arthur Roy Shepherd and Bessie Byrd upon a seven count indictment filed June 1, 1955 (R. 35). Petitioner was convicted upon counts one, two and three of the indictment. Count one charged petitioner, Shepherd and Byrd with conspiracy to violate the narcotic laws (18 U.S.C. 371). Count two charged petitioner and Byrd with having purchased, sold and distributed, not in the original stamped package, 100 capsules of a mixture containing heroin, a narcotic drug, in violation of 26 U.S.C. 4704(a). Count three charged petitioner and Byrd with having facilitated the concealment and sale of the 100 capsules of heroin mixture charged in count two, in violation of 21 U.S.C. 174. Petitioner and Byrd were also charged in counts six and seven of the indictment with regard to 381 capsules of a heroin mixture. Count six charged petitioner and Byrd with having purchased, sold and distributed the said capsules of heroin mixture in violation of 26 U.S.C. 4704(a). Count seven charged petitioner and Byrd with having facilitated the concealment and sale of the same 381 capsules of heroin mixture charged in count six in violation of 21 U.S.C. 174. The District Court dismissed counts six and seven of the indictment (R. 198).

On June 29, 1955 petitioner received consecutive sentences under the three counts of the indictment of which he had been convicted totaling six years to twenty years imprisonment as follows: count one—one year to four years; count two—thirty months to eight years; count three—thirty months to eight years; all sentences to run consecutively (R. 233).

Before indictment, petitioner and Bessie Byrd filed a motion to suppress as evidence, certain "marked" money

seized from their persons and from their premises, upon grounds, *inter alia*, (1) their arrest was illegal, (2) their premises were forcibly broken into and entered, (3) the search of their premises was exploratory, all in violation of Amendment IV. Attached to the motion to suppress was the joint affidavit of petitioner and Bessie Byrd which, in pertinent part, averred:

"That about four (4) o'clock A.M. on the morning of March 25, 1955; they were awakened in their apartment, located at Columbia Road, N.W., Washington, D. C., by the noise created by someone breaking in a doorway in the hallway, leading to their apartment (only), and that upon his cracking his door (with a chain thereon), to ascertain the origin of said noise, that officers Wilson, Pappas and four others did break the chain off of the door, and forcibly enter his apartment" (R. 2).

The motion to suppress was denied (R. 34). During the trial the motion was renewed several times and denied (R. 51; 130; 182; 194).

Evidence Pertinent to Motion to Suppress Both Upon the Motion and During Trial

At about 1:35 A.M., March 25, 1955, Federal Bureau of Narcotics Agent Fred E. Wilson arrested one, Clifford Reed under an arrest warrant charging Reed with violations of the narcotics laws on January 20, 1955 (R. 73; 118). Agent Wilson knew Reed to be a narcotic addict (R. 119; 138). Reed told Agent Wilson that in the past he had purchased heroin from the defendant Shepherd in 100 capsule lots for \$100.00; that he met Shepherd in the early morning hours, gave him the money and either waited at the home of Shepherd until Shepherd returned with the

heroin or, on occasion would go with Shepherd to 1337 Columbia Road, N.W., where Shepherd would get out of the cab, go into the basement Apartment marked No. 1, and purchase heroin from petitioner, come back to the cab and give him the heroin (R. 9; 40). Reed told Agent Wilson that Blue Miller and Bessie Byrd resided in Apartment No. 1, 1337 Columbia Road, N.W. There was no testimony that Reed ever actually saw Miller or Byrd, that he knew either, or that he ever witnessed any transaction between Shepherd and Miller or Byrd. Officer Wurms said that he knew petitioner from a prior narcotics investigation but on cross examination he admitted that he had seen petitioner and Byrd but had never talked to either (R. 29).

Because the narcotic addict Clifford Reed told Agent Wilson that he could cause or effect a purchase of narcotics from the defendant Shepherd, Reed was not immediately "booked" or charged (R. 121).

Agent Wilson, having received this information, decided against obtaining warrants for the arrest of petitioner and Bessie Byrd and decided against obtaining a warrant for the search of their premises. Instead, Agent Wilson set out to employ the willing narcotic offender, Clifford Reed as an informer, for the purpose of testing the reliability of Reed's information, or, to use Reed to contact the defendant Arthur Roy Shepherd and thereby possibly being led to the source of Shepherd's supply. Agent Wilson then made arrangements to meet D. C. Police Officer Wurms, Bureau of Narcotics employee Lewis, Agent Pappas, and Virginia State Police Officers Bowman and Thompson at the corner of 6th Street and New York Avenue, N.W., in the District for the purpose of assisting him in his plan. Agent Wilson then took the narcotic offender Reed from the Police Headquarters where he had been temporarily detained without being booked or charged as a result of his arrest under

the warrant (R. 119; 156), to the corner of 7th and T Streets, N.W., where they met by pre-arrangement, Agent Pappas, and Officer Bowman, of the Virginia State Police at about 2:30 A.M. (R. 63; 81). The officers and agents with Reed in custody then proceeded in one car to the corner of 6th Street and New York Avenue, N.W. (R. 63; 81). Present also was D. C. Police Officer Ivan Wurms.

On that corner Agent Wilson recorded the serial numbers of \$100.00 in bills¹ (R. 11; 82). The "marked" \$100.00 in bills was given to Bureau of Narcotics employee Arthur Lewis. It was planned that Reed would act in conjunction with Lewis at the direction of Agent Wilson (R. 120). Agent Wilson instructed employee Lewis to "*put the money on the proposed defendant,*" Arthur Roy Shepherd (R. 121). It was understood that the arrested narcotic offender Clifford Reed was to act with Lewis in an effort to purchase narcotics from Shepherd. It was agreed that if Lewis had given the "marked" money to Shepherd, Lewis was to walk directly into the 1330 Vermont Avenue house upon arrival there (R. 15; 85).

Lewis and, the now informer, Reed entered a taxicab and proceeded to 617 M Street, N.W., where employee Lewis gave informer Reed \$50.00 of the "marked" money to attempt to purchase narcotics from Shepherd (R. 64). Reed went into 617 M Street, N.W., and returned with defendant Shepherd. Reed then returned the "marked" \$50.00 to Lewis (R. 65). Lewis then gave to Shepherd \$100.00 of the "marked" money (R. 69). The cab proceeded to Reed's home at 1330 Vermont Avenue, N.W., where Lewis and Reed got out of the cab (R. 13; 75). At all times the taxi containing Reed and Lewis, and later Shepherd,

¹ This \$100.00 in bills, the serial numbers of which were recorded is referred to as the "marked money" throughout the testimony.

was being followed by two cars, one containing Agent Wilson, D. C. Officer Wurms, and Virginia Officer Bowman, and a second car containing Agent Pappas and Virginia Officer Thompson; the two cars were in contact with each other by radio (R. 13; 84).

Shepherd remained in the taxi; the taxi proceeded to the 1300 block of Columbia Road, N.W., where it stopped, double-parked. Shepherd got out of the cab and entered the basement of 1337 Columbia Road, an Apartment building (R. 13).

Agent Wilson got out of his car, waited about a minute, and then entered the basement entrance to 1337 Columbia Road, N.W.; he looked but saw no one in the hallway (R. 13; 88). The hallway had three doors, the outside entrance door, one to the furnace room and one leading to the back Apartment (R. 14; 98). Wilson left the basement of the building, took a position across the street where he observed a light go on in the front *furnace room*; the light stayed on a short time. It is to be noted that he did not see a light in Apartment 1. Wilson testified that he was not certain that Shepherd had contacted either petitioner or Bessie Byrd until after the Apartment had been searched (R. 21). A few minutes later Shepherd came out of the house and got back into the taxicab (R. 14). Agent Wilson then got into a car driven by Agent Pappas. There was conversation by radio between Wilson and Officer Wurms, who was driving the second car (R. 91). Both cars followed the taxi in which Shepherd rode for a few blocks to the corner of 13th and Fairmont Streets, where Wurms pulled in front of the taxi and stopped it (R. 14; 19). Wurms testified that he stopped the cab because he wanted to arrest Shepherd (R. 153). Wilson testified that when the cab was stopped he saw Shepherd lean forward and place something under the front seat of the cab (R. 14; 92). Agent Wilson imme-

diately arrested Shepherd and took him from the cab although at that time, Wilson testified, he had no evidence of any violation of the law (R. 124; 140-141; 155). After the arrest of Shepherd the cab was searched and an envelope containing 100 capsules of a suspected narcotic was found under the front seat of the cab (R. 92). Wilson questioned Shepherd about the package found in the cab. Shepherd said that he had been to 1337 Columbia Road, that he had not gone there to see anyone in particular and that Reed and Lewis had told him to go to that address and look behind a fire extinguisher in the hallway where he would find 100 capsules of heroin in a package (R. 16; 94). Shepherd was searched by Wilson, who said, "I was looking for my marked money" (R. 94). Shepherd did not have the marked money.

The officers and agents then returned to 1337 Columbia Road, N.W. Some officers went immediately to the basement furnace room and, presumably, began a search (R. 125). Officer Wurms entered the building by the first floor entrance upstairs. In order to enter the Apartment of petitioner from the first floor, it was necessary to enter a door leading to the basement at the bottom of the stair case. **THIS DOOR WAS LOCKED.** *Officer Wurms entered this door by using a skeleton key* (R. 29). Having entered the basement hallway by breaking the door in the aforesaid manner, Officer Wurms proceeded to the door leading to Apartment 1, where he was met by Agent Wilson. Agent Wilson had entered the building by way of the basement and proceeded to the door of Apartment 1; he testified: "I put my ear to the door and was listening to see if I could hear anybody moving around inside, and Officer Wurms joined me at the door, and he knocked on the door and in a very low voice he said, 'Blue, police, open the door,' and somebody from within the room says,

'Who's there?', and he says, 'Blue, open the door, police,' AND HE WAS SAYING IT VERY QUIETLY" (R. 99). Wilson said that he heard no signs of life or of anybody in the Apartment (R. 133). Wilson testified:

Q. Will you tell us what happened when you went down into the premises there?

A. Officer Wurms knocked on the door and a voice from inside asked, "Who is there?" Officer Wurms repeated the name, "Blue", called Blue. Then he said in a very low voice, "Police". The door was opened slightly, and IT HAD A CHAIN ON IT, and as the door was opened and the man looked around the door, HE TRIED TO CLOSE THE DOOR.

Q. Did he say anything when he opened the door?

A. Yes, sir, he didn't want to let us in.

Q. What were his words?

A. I can't recall, but HE WANTED TO KNOW WHAT WE WERE DOING THERE.

Q. What happened with respect to the door at that point?

A. WE FORCED THE DOOR OPEN AND FORCED OUR WAY INTO THE ROOM.

Q. Was the door itself broken?

A. No, sir.

Q. What was broken, if anything?

A. I believe THE CHAIN LATCH ON THE DOOR WAS BROKEN (R. 16-17).

Wilson said that he did not know why Wurms spoke in a *very low voice* at the door (R. 133). As to whether or not the agent or officer ever announced to petitioner their PURPOSE in entering the Apartment, Wilson testified:

The Witness: Officer Wurms knocked on the door, he says, "Blue, open the door, police," there was a voice inside that said, "Who's there?", and Wurms again knocked on the door and says, "Blue, open the door, police."

Q. That was everything Officer Wurms or yourself said?

A. Until the door was opened, yes (R. 134).

Petitioner was never told the purpose of the entry into his Apartment. Wilson testified that their purpose of *looking for marked money* was not disclosed until after the forced entry had been effected:

Q. Did you or Officer Wurms ever tell Mr. Miller why you wanted to come into his Apartment?

A. I believe after we were in there we told him that WE WANTED TO LOOK FOR THE MONEY.

Q. After you were in?

A. Yes, sir (R. 134).

Officer Wurms testified concerning the breaking and entry into petitioner's Apartment: "... There was a chain on the door. Blue Miller saw me, Agent Wilson, and I don't know who else he saw but he tried to close the door and at that time we put our hands inside the door and PULLED AND RIPPED THE CHAIN OFF AND ENTERED" (R. 157).

Wurms also testified:

Q. Now, Officer Wurms, at the time you entered Apartment 1, the door was locked wasn't it? There was a chain on the door, was there not?

A. There was a chain on the door, yes, sir.

Q. And that chain was broken off, wasn't it?

A. Yes, sir (R. 31).

As soon as the forced entry was effected, Agent Wilson testified, "I told him to sit down and said they were under arrest and, WE WERE LOOKING FOR OUR MARKED MONEY" (R. 19). Wilson testified also, "WE BEGAN AN IMMEDIATE SEARCH OF THE ROOM FOR THE MONEY" (R. 100). The primary purpose of the agents and officers in forcing an entry into the Apartment was not to arrest petitioner or Byrd but to search for the "marked" money. Wurms took from co-defendant Bessie Byrd a roll of money and gave it to Agent Wilson (R. 17; 137). Wilson began checking the serial numbers and uncovered \$34.00 of the "marked" money (R. 17). An hour or so later Officer Wurms found \$66.00 of the marked money, some in a hat box and the remainder between the sheets of the bed in the Apartment (R. 101). No narcotics were found in the Apartment. Some two hours later 381 capsules of a heroin mixture were found in the furnace room (R. 101). The trial court granted the motion to dismiss as to counts 6 and 7 of the indictment pertaining to the 381 capsules found in the furnace room (R. 198).

The use of the "marked" money as evidence resulted in petitioner's conviction as aforesaid.

Summary of Argument

I.

The facts and circumstances within the knowledge of Agent Wilson and Officer Wurms at the time of the breaking into of petitioner's apartment did not constitute probable cause to believe petitioner had committed a felony. But assuming, *arguendo*, that the Agent and Officer did in fact have probable cause to arrest petitioner without a warrant, petitioner's arrest was illegal and the evidence secured as a result should have been excluded under Amendment IV, of the Constitution because:

(1) The initial entry by Officer Wurms into the basement hallway was accomplished by a felonious breaking in the use of a skeleton key such that the felonious character of his initial entry, "followed every step of his journey inside the house and tainted its fruits with illegality." *McDonald v. United States*, 335 U.S. 451, 459; 93 L.Ed. 153, 160;

(2) The breaking of the chain latch on petitioner's apartment door and entry therein by force without notice of purpose by Wurms or Agent Wilson, although petitioner made inquiry of them, was an illegal entry under the rationale of 18 U.S.C. 3109 which provides that officers must give notice of their purpose before breaking a door to execute a search warrant. Officers have no greater rights in entering a dwelling at night to effect an arrest without a warrant than they have in executing a search warrant. Moreover, in the absence of Federal legislation providing for the manner and method of entering a dwelling to arrest a suspect without a warrant, an arrest depends for its validity upon local or state law. *United States v. Di Re*, 332 U.S. 581, 589; 92 L.Ed. 210, 217. In the District of Columbia, local law on the subject is expressly set forth in *Accarino v. United States*, 85 U.S. App. D.C. 394; 179 F.2d 456 which holds that before an officer may break a door to arrest he must give due notice of his purpose. The United States Court of Appeals for the District of Columbia Circuit in several cases has held that an entry to effect an arrest, with or without a warrant, without having first given notice of purpose is an illegal entry, such an arrest unlawful and evidence secured as a result inadmissible.

II.

Petitioner's arrest was merely incidental to the principal purpose of Agent Wilson and Officer Wurms of searching

for and seizing the "marked money" that had been passed to Shepherd. The Agent and Officer hoped to find the marked money in petitioner's apartment. If the marked money could be found in petitioner's apartment, then petitioner could be connected with the narcotics seized from Shepherd. The arrest was, therefore; a mere pretext for the search.

This Court has consistently pointed out that what constitutes a reasonable search of an automobile or semi-public place would not constitute a reasonable search of a private home. The search of petitioner's home without a warrant is not the type of search approved in *United States v. Rabinowitz*, 339 U.S. 56; 94 L.Ed. 653 because here the search and seizure were not incident to a valid arrest and the place broken into and searched was a private dwelling and not a business room open to the public. The absence of a warrant, therefore, becomes a circumstance to be considered, along with the two unlawful breakings, in determining whether or not the search was a reasonable one under Amendment IV.

ARGUMENT

I.

When Officers Break a Door to Arrest a Suspected Felon Without a Warrant and Without Notice of Purpose, Evidence Seized as a Result Is Inadmissible Under Amendment IV. And Under the Rationale of 18 U.S.C. 3109.

During nighttime hours March 25, 1955, District of Columbia police officer, Wurms and Federal Bureau of Narcotics Agent Wilson, without a warrant of any sort and without first giving notice of their purpose, broke into

and forced their way into petitioner's dwelling. Petitioner occupied an apartment in the basement of an apartment building. Wurms entered the apartment building by the first floor and broke into a door leading from the first floor to the basement hallway by using a skeleton key to unlock a locked door. Wilson entered the building by the basement entrance and placed his ear against the door of petitioner's apartment and heard no indication of anyone moving around in the apartment. Wilson was joined at that door by Wurms who had broken into the basement hallway as aforesaid. Thereupon Wurms said in a "very low voice", "very quietly", "Police, open the door". Petitioner partially opened the door, which continued to be secured by a chain and asked, "what you all want?". *There was never an answer to his question.* If by chance the Agent and Officer had forgotten to announce their purpose in seeking entry into petitioner's home, they were thus given an opportunity to state their purpose. This they failed to do. Petitioner then attempted to close the door, which was still secured by the chain latch. Without saying anything more, Wurms broke the chain securing the door and Wurms and Wilson forced their way into petitioner's apartment. When inside the apartment, Agent Wilson told petitioner to sit down and that they were under arrest and that, *"We Were Looking for Our Marked Money"* (R. 19). Wilson said that, *"We Began An Immediate Search of the Room for the Money"* (R. 100). Petitioner's apartment was occupied by himself and co-defendant Bessie Byrd. From Byrd's housecoat pocket part of the marked money was taken, and the rest was found in the bed and in a hat box in the apartment.

The Government claims that the purpose of the breaking and entry into petitioner's apartment was to arrest petitioner and Bessie Byrd upon probable cause to suspect that

they had committed the felony of selling narcotics to their co-defendant Shepherd. Petitioner urges that the chief purpose of the breaking and entry both into the hallway and into his apartment was not to arrest him but to search for and seize certain "marked money" that the Agent and Officer expected to find in his apartment. The conviction of petitioner upon all of the 3 counts of the indictment of which he was found guilty by a jury is dependent upon the validity of the seizure of the said "marked money" found in his apartment.

The breaking and entry into the hallway and the breaking and entry into petitioner's apartment without notice of the purpose of the Agent and Officer rendered the arrest of petitioner and his co-defendant Byrd and the subsequent search for and seizure of the "marked money" illegal and in violation of the rights secured to petitioner under Amendment IV of the Constitution. Upon this main proposition this brief is written. However, there is a serious question as to whether or not the Agent and Officer had probable cause to believe that either petitioner or Byrd had committed a felony at the time they broke into and entered petitioner's apartment. At the time of entry the facts known to the Agent and Officer did not constitute probable cause. They had knowledge of these facts:

About 1:35 a.m., March 25, 1955, Agent Wilson arrested a known narcotic offender and narcotic addict, Clifford Reed on a warrant charging a narcotic violation, January 20, 1955. Reed was not immediately "booked" or charged but was taken to Police Headquarters. Reed told Wilson that he had in the past purchased heroin in 100 capsule lots from one, Arthur Roy Shepherd; that he met Shepherd in the early morning hours, gave him the money and waited at Shepherd's home until Shepherd returned with the heroin or, on occasion, would go in a taxi with Shepherd

to 1337 Columbia Road, and wait in the taxi while Shepherd went into Apartment No. 1, where "Blue" Miller and Bessie Byrd resided and that Shepherd would return with the heroin. Reed did not say that he knew either Miller or Byrd or that he ever witnessed any transaction between Shepherd and Miller or Byrd.

It was agreed that Reed would work with the Agent in attempting to purchase narcotics from Shepherd. Apparently Wilson believed that he could use Reed for this purpose and that he might also be led to the source of Shepherd's supply. There was nothing in the evidence to suggest that this plan could not have been carried out on the next, or any other subsequent night, or, that it was not feasible to get warrants for the arrests of Shepherd, Byrd, and petitioner or a search warrant for the premises of petitioner. According to a pre-arranged plan, a Bureau of Narcotics employee, Lewis, who was being trained as an Agent, was given \$100.00 in bills, the serial numbers of which had been recorded. He was directed to, "put the money on the proposed defendant Shepherd," and he left in the company of, the now informer, Reed in a taxi. It was planned that if employee Lewis went into the home of Shepherd at 1330 Vermont Avenue, it would indicate that the marked money had been passed to Shepherd. Agent Wilson, Officer Wurms, and other officers followed the taxicab in two automobiles and kept the taxi under observation. Wilson and Wurms observed Reed get out of the taxi at 617 M Street and return with Shepherd. The taxi proceeded to 1330 Vermont Avenue where Reed and Lewis got out of the cab. Shepherd remained in the cab. The cab then proceeded to the 1300 block of Columbia Rd., and double-parked. Shepherd went into 1337 Columbia Rd., by the basement entrance. Officer Wilson entered the base-

ment, looked into the hallway and saw no one. Wilson then went across the street where he observed a light go on in the front furnace room of the basement. He saw no light in petitioner's apartment. A few minutes later Shepherd re-entered the taxi. The taxi was followed several blocks and was stopped by Officer Wurms. Shepherd was immediately arrested; he had been seen to lean forward and place something under the seat of the cab. The cab was searched and an envelope containing 100 capsules of a heroin mixture was found under the seat. After denying that the package was his, Shepherd said that he had been to 1337 Columbia Rd.; that he had gone there at the direction of Reed and Lewis who told him he would find a package with 100 capsules of heroin behind a fire-extinguisher. Wilson and Wurms had information that petitioner Miller and Bessie Byrd had in the past violated the narcotic laws. Shepherd was searched and the marked money was not found. The officers and agents then proceeded to 1337 Columbia Rd., an apartment building. Officer Wurms entered the building by the first floor; when he found the door leading from the first floor to the basement locked, he broke and entered the same by using a skeleton key and joined Wilson in the basement. Meanwhile, Agent Wilson had placed his ear to the door of Apartment No. 1, and had heard no one moving around inside. It was then that Officer Wurms, "very quietly" and in a "low tone of voice" said, "Blue, Police, open the door." Petitioner then partially opened the door which was secured by a chain latch and inquired who was there. Petitioner then attempted to close the door. Without any announcement of purpose and without saying anything further the chain latch on the door was broken and Wurms and Wilson forced their way into the apartment. Inside the apartment Miller and Byrd were told that they were under arrest and that the agent and officer were *looking for their marked money.*

There was under the circumstances no probable cause in the minds of Wilson and Wurms to believe that petitioner and Byrd had sold or transferred the narcotics to Shepherd and there was then no reason to arrest petitioner or Byrd. There was no suggestion in the evidence that Miller or Byrd might flee or that it was not reasonable under the circumstances to procure warrants for the arrest of Byrd and petitioner and a warrant for the search of their premises. It is also highly significant to note that Agent Wilson testified that he was not certain that Shepherd had contacted Miller or Byrd until *after* the search of the apartment.

This argument, however, is written upon the assumption, *arguendo*, that the officers and agents did in fact have probable cause for the arrest of petitioner. Petitioner's arrest was illegal because the door leading to the basement hallway was broken by use of a skeleton key and the door to his apartment was broken without any announcement as to why the officers and agents sought to enter this home at that hour of the night.

Congress has enacted no legislation defining the circumstances under which an agent or officer may break down the door of a private dwelling during the nighttime to arrest a suspected felon without a warrant. Congress has prescribed conditions under which an officer may break a door to execute a search warrant. This prescription was originally contained in the "Espionage Act", 40 Stat. 229, Chap. 30, Title XI; approved July 15, 1917. Title XI of the original Bill (H.R. 291, 65th Congress, 1st Session) had to do with search warrants and was entirely re-written in Conference between the House and Senate. This title was based almost wholly upon the New York Law on the sub-

ject.² Sections 8 and 9 of the original Title XI became sections 618 and 619 of Title 18 United States Code (1940 ed.), said sections 618 and 619 were consolidated with minor changes of phraseology but without change of substance³ and now comprise Section 3109 of Title 18 of the 1952 Edition of the United States Code.⁴

18 U.S.C. 3109 provides:

Section 3109. Breaking doors or windows for entry or exit.

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant. (June 25, 1948, ch. 645, par. 1, 62 Stat. 820:)

18 U.S.C. 3109 is based upon New York Code of Criminal Procedure Section 799 which provides:

"The officer may break open an outer or inner door or window of a building or any part of the building, or anything therein, to execute the warrant, if after notice of his authority and purpose, he is refused admittance."

² "Title XI—Search Warrants."

³ This title was entirely re-written in conference. The new title as presented by the conferees was based upon the New York Law on the subject and it follows generally the policy of that law. It has written into it many of the provisions of the title as passed by the House." Conference Report No. 69, Congressional Record 65th Cong. 1st Session page 3305; U.S. House Reports Vol. 1, Serial No. 7252; Senate Documents, Vol. 10, Serial No. 7264.

⁴ United States Code, 1952 Edition, page 2492, Reviser's note.

⁵ Act of June 25, 1948, ch. 645, par. 1; 62 Stat. 819.

Concerning this section of the New York Code a compiler's note in Vol. 66(2) McKinney's Consolidated Laws of New York Annotated at page 694 states:

"By the express provisions of this section, the officer may not break into a place under a search warrant, unless, after due notice of his authority and purpose, he is refused admittance, and his doing so otherwise is a criminal offense by the express provisions of Penal Code Section 120 now Penal Law Section 1847. Phelps v. McAdoo, 1905, 47 Misc. 524; 94 N.Y.S. 265, 19 N.Y. Cr. R. 126, 10 N.Y. Ann. Cas. 470."

The New York Code provides for the manner of entering a building for the purpose of making an arrest without a warrant. New York Code of Criminal Procedure, Section 177 provides as follows:

"To make an arrest as provided in the last section⁵ the officer may break open an outer or inner door or window of a building if, after notice of his office and purpose, he is refused admittance."

It is of interest to note that the New York statutes require the officer to give notice of his purpose before breaking a door when executing a search warrant as well as when making an arrest without a warrant.

Can it be that Congress intended that the citizen whose home is sought to be invaded for purposes of an arrest without a warrant is not entitled to be notified of the purpose of the officers seeking entry before such officers are authorized to break in the door to his dwelling and the citizen would be entitled to such notice only if the officers had

⁵ The last section, 177, sets forth when an officer may arrest without a warrant, etc.

a warrant for the search of his home? It would not be reasonable or logical to believe that such is the intent of Congress.

There is, of course, no Federal statute treating of the validity of an arrest without a warrant when effected by the breaking of a door. Petitioner says that inasmuch as 18 U.S.C. 3109 prescribes conditions under which an officer may break a door to search with a warrant, the requirement of that statute that the officer must first give notice of his purpose before breaking a door should apply to officers seeking entry into a private home to arrest a suspected felon *without* a warrant. It is entirely unreasonable and illogical to suppose that the absence of a warrant permits greater latitude in making arrests under these circumstances than in instances of arrests *with* a warrant. However, even if this be not true, this Court in considering the problem of an arrest without a warrant in *United States v. Di Re*, 332 U.S. 581 at page 590; 92 L.Ed. 210 at page 218 said, "Turning to the Acts of Congress to find a rule for arrest without warrant, we find none which controls such a case as we have here and none that purports to create a general rule on the subject". In the *Di Re* case, *supra* and in a subsequent case, *Johnson v. United States*, 333 U.S. 10, 92 L.Ed. 436 this Court held that in the absence of an applicable Federal statute, an arrest without a warrant for a Federal crime depends for its validity upon the law of the state wherein the arrest is made.

In the District of Columbia the law on the subject has been clearly set forth in *Accarino v. United States*, 85 U.S. App. D.C. 394; 179 F.2d 456: A door may not be broken to effect an arrest unless the officer makes known the cause of his demand for entry and that an arrest in violation of this rule is illegal. The arrest of petitioner Miller and the arrest of his co-defendant Byrd were, therefore, plainly illegal under the law in the District of Columbia.

In this case Officer Wurns not only broke the chain latch on the apartment door of petitioner without an announcement of purpose but, indeed, this was the *second* breaking, for Officer Wurns had gained access to the basement hallway by using a skeleton key to unlock a door leading from the first floor to the basement (R. 29). In *McDonald v. United States*, 335 U.S. 451, 458-460; 93 L.Ed. 153, 160 the concurring opinion of Mr. Justice Jackson is based upon the proposition that a search and seizure resulting from an unlawful breaking and entry is illegal and inadmissible for that reason alone:

"But it seems to me that each tenant of a building, while he has no right to exclude from the common hallways those who enter lawfully, does have a personal and constitutionally protected interest in the integrity and security of the entire building against unlawful breaking and entry. Here the police gained access to their peeking post by means that were not merely unauthorized but by means that were forbidden by law and denounced as criminal. In prying up the porch window and climbing into the landlady's bedroom, they were guilty of breaking and entering—a felony in law and a crime far more serious than the one they were engaged in suppressing. *Having forced an entry without either a search warrant or an arrest warrant to justify it, the felonious character of their entry, it seems to me, followed every step of their journey inside the house and tainted its fruits with illegality.*" Cf. *Weeks v. United States*, 232 U.S. 383, 58 L.Ed. 652, 34 S.Ct. 341, LRA 1915B 834, Ann. Cas. 1915C 1177; *Taylor v. United States*, 286 U.S. 1, 76 L.Ed. 951, 52 S.Ct. 466; *Johnson v. United States*, 333 U.S. 10, 92 L.Ed. 436, 68 S.Ct. 367."

* Emphasis supplied.

Here, of course, the position of petitioner Miller is infinitely stronger than that of McDonald because here, not only did the officer unlawfully break and enter a door leading to a public hallway, but after having broken into and entered the hallway, he broke the private door to petitioner's apartment without announcement of purpose. So far as Officer Wurms was concerned, it is obvious from his unlawful entry into the door leading to the basement, before he broke petitioner's door, that he had no intention of proceeding in a lawful manner.

In *Accarino v. United States*, 85 U.S. App. D.C. 394; 179 F.2d 456 the United States Court of Appeals for the District of Columbia Circuit gathered all of the authorities, English and American, on the subject of the right of an officer to break down the door of a dwelling to effect an arrest without a warrant, and after making a painstaking, complete and careful analysis of all of the authorities, reached this conclusion:

"It is of interest to us in the case at bar that there is no division of opinion among the learned authors we have been discussing upon the proposition that even where an officer may have power to break open a door without a warrant he cannot lawfully do so unless he first notifies the occupants as to the purpose of his demand for entry."

* * * * *

"Upon one topic there appears to be no dispute in the authorities. Before an officer can break open a door to a home, he must make known the cause of his demand for entry. There is no claim in the case at bar that the officers advised the suspect of the cause of their demand before they broke down the door. Upon that clear ground alone, the breaking of the door was unlawful, the presence of the officers in the apartment

was unlawful, and so the arrest was unlawful. It follows that the search was unlawful and the evidence thus procured should have been suppressed." *Accarino* case, *supra*.

The United States Court of Appeals for the District of Columbia Circuit reaffirmed the doctrine of the *Accarino* case, *supra* in *Gatewood v. United States*, 93 U.S. App. D.C. 226; 209 F.2d 789, saying:

"In *Accarino v. United States*, 1949, 85 U.S. App. D.C. 349, 179 F.2d 456, 465, we reviewed the authorities and found them unanimous in holding that before an officer can break open the door to a home, he must make known the cause of his demand for entry."

On December 31, 1956, that Court decided a case involving the breaking of a door to execute a search warrant without announcement of purpose by officers seeking entry, *Woods v. United States*, 99 U.S. App. D.C. 351; 240 F.2d 37. Concerning the admissibility of the evidence secured as a result of the execution of the warrant in this fashion, the Court said: "Having failed by their own admission to comply with the command of the statute, *we must hold the evidence was obtained as a result of the unlawful entry. . .*" The Court cited *Palmer v. King*, 41 App. D.C. 419, 425-426:

"... when an officer, in the execution of a writ, finds an outer door or window slightly ajar, but not sufficiently so to admit him, he may open the door or window, provided he does not find it obstructed, but if it is fastened or obstructed so as to require force to overcome the obstruction he may not use such force, for such an entrance would constitute a breaking."

See also: *McKnight v. United States*, 87 U.S. App. D.C. 151; 183 F.2d 977.

The United States Court of Appeals for the Ninth Circuit in *Alvan v. United States*, 33 F.2d 467 held that the breaking into of an occupied dwelling at nighttime to search for liquor was unlawful and evidence obtained inadmissible. The Court reasoned:

"Forcibly and in the nighttime to enter an occupied residence, even though it is thought to be used in part for unlawful purposes, is likely to be attended with disorder, and to result in violence and tragic consequences. We feel constrained to hold that the search was unreasonable and in violation of constitutional rights, and that therefore the evidence was inadmissible."

In Kentucky it is provided by statute:

"To make an arrest, an officer may break open the door of a house in which defendant may be, after having demanded admittance *AND EXPLAINED the purpose for which admittance is desired*". Kentucky Criminal Code Section 40; *American Cent. Ins. Co. v. Stearns Lumber Co.*, 145 Ky. 255; 36 L.R.A. (N.S.) 566; 140 S.W. 148.

The Kentucky statute is nothing more than a statement of the common law. The common law regarding this matter is in force in the District of Columbia. *Accarino v. United States*, *supra*.

Since it is plain that in this case the officer and agent effected the arrest of petitioner through a manifest violation of the law, the question is whether or not such arrest was in violation of the rights secured to petitioner under Amendment IV of the Constitution. Because there is no

sanction in the law against the agents or officers making an arrest under such circumstances it would appear that the penalty must be assessed against the government. That penalty is that the arrest must be ruled illegal and its fruits excluded. Since the first expression of the Federal exclusionary rule against evidence obtained in violation of law in *Weeks v. United States*, 232 U.S. 383 many courts have dealt with its rationale, including the United States Court of Appeals for the District of Columbia, *Nueslein v. District of Columbia*, 73 App. D.C. 85; 115 F.2d 690 wherein the late Chief Justice Vinson, then an associate Justice of that Court, stated that officers should not be encouraged to proceed in an irregular manner on the chance that all will end well. To those who believe that this might handicap law enforcement officers, Justice Vinson had this to say:

"The federal rule which we are applying to this case has been called an expression of misguided sentimentality, a rule more apropos for a fox hunt than for the catching of brutal criminals. It may be that the courts at times by giving force to the principles in the Bill of Rights have handed scheming, calculating, premeditating felons too many effective instruments in the legal battle before the penitentiary portals. The IVth Amendment, however, was not written for felons alone. It not only includes misdemeanants, but also the great bulk of the population, the innocent. Ordinarily, the individual is entitled to the privacy of his home. But when the individual through his actions becomes a suspect, the sanctity of his home is not quite so inviolable; the public interest in bringing criminals to trial cuts across that sanctity. But even then the Constitution requires an orderly procedure." *Nueslein v. District of Columbia*, 73 App. D.C. 85 at page 91; 115 F.2d 690 at page 696.

The California Supreme Court in *California v. Cahan*, 44 Cal. 2d 434; 50 ALR 2d 513; 282 P.2d 905, decided April 27, 1955, discarded the rule that evidence, no matter how illegally obtained, is admissible against a defendant in a criminal case and in that decision adopted the federal doctrine that evidence obtained in violation of law must be excluded. The opinion of Judge Traynor conceded that the exclusionary rule would not prevent all illegal searches and seizures but expressed the view that it would go far in discouraging them. Said Judge Traynor: "Moreover, any process of law that sanctions the imposition of penalties upon an individual through the use of the fruits of official lawlessness tends to the destruction of the whole system of restraints on the exercise of the public force that are inherent in the concept of ordered liberty."

The action of the Agent and Officer in this case being plainly illegal, the evidence secured as a result of such illegal activity must be suppressed. It was error to admit into evidence the "marked money" seized by Agent Wilson and Officer Wurms.

II.

Petitioner's Arrest Was Incidental to the Purpose of Searching His Home at Night Without a Warrant for Evidence (Marked Money) and the Arrest Was a Mere Pretext for the Search.

This Court, in *United States v. Rabinowitz*, 339 U.S. 56; 94 L.Ed. 653 made clear the law that there is no requirement for a search warrant *solely* upon the basis of the practicability of procuring it rather than upon the *reasonableness* of the search after a lawful arrest. The Court held that search and seizure reasonable because: "(1) the search and seizure were incident to a valid arrest; (2) the place

of search was a business room to which the public, including the officers, was invited . . . (5) the possession of the forged and altered stamps was a crime . . .” Previously this Court in *Brinegar v. United States*, 338 U.S. 160; 93 L.Ed. 1879 in upholding the reasonableness of a search without a warrant stated: “No problem of searching the home or any other place of privacy was presented either in *Carroll* or here.” 338 U.S. at page 176; 93 L.Ed. at page 1891. Earlier, this Court in *Johnson v. United States*, 333 U.S. 10, at page 14; 92 L.Ed. 436 said, “when the right of privacy must reasonably yield to the right of search is, as a rule, to be decided by a judicial officer, not by a policeman or Government enforcement agent.” We learned from this Court in *Agnello v. United States*, 269 U.S. 20, 33; 70 L.Ed. 145; 51 A.L.R. 409:

“Belief, however well founded, that an article sought is concealed in a dwelling house, furnishes no justification for a search of that place without a warrant. And such searches are held unlawful notwithstanding facts unquestionably showing probable cause.”

The rationale of these decisions seems to be that there is a marked and decided difference between searches of homes and searches of public places or automobiles and that in instances of search without a warrant the privacy of a home is not lightly to be regarded. Petitioner says the breaking into his home during the nighttime without a warrant, without announcement of purpose and for the primary purpose of searching for evidence was oppressive, unreasonable and a violation of the rights secured to him under Amendment IV.

Agent Wilson had but one purpose in mind in the entry into petitioner's apartment. That purpose of course, was the search for and the seizure of his “marked money” (R.

134). This was not a case where the agent had an informer ready, willing and able to testify that he had purchased a narcotic drug from the suspect. Here the purchase had been made by the "proposed defendant Shepherd" and this was an inference only; there would never be a witness to the assumed transaction. In order to make out a case against petitioner for the sale to Shepherd it was of paramount importance to search for and to seize the "marked money" with which Shepherd made the purchase. After having forced and broken their way into petitioner's dwelling, Wilson told petitioner and Byrd, that they were looking for their marked money. (R. 134). It is of significance also that Wilson put his ear to petitioner's door to hear if there were sounds of anyone moving around inside. Despite the fact that Wilson said he heard no signs of life inside, Wurms spoke "very quietly" and spoke in a "very low voice" when he knocked on the door to say "Blue, police, open the door." Wurms had reached the basement by unlocking a door with a skeleton key. It could be inferred from this conduct that the agent and officer did not intend that their call be heard and that they purposed to break down the door in any event. But even if such was not their intention, it cannot be said that they had any other *primary* purpose in entering the premises other than to search for the marked money. It is obvious, therefore, that the breaking and entry was for that principal purpose; the arrests of petitioner and Byrd were merely incidental to the search. A case very similar to the instant case in this respect, except that there was no breaking of a door and that the informers had made a purchase of narcotics from the suspect with marked money, had told agents that they had done so and had turned over the narcotics purchased to the agents, is *Henderson v. United States* (4th Cir.), 12 F.2d 528. In that case the Court said:

"There is no showing or contention that it was necessary to arrest defendant without a warrant to prevent his escape, and a careful consideration of the evidence leads irresistibly to the conclusion that the search of his dwelling was made, not as an incident of the arrest, but as the chief object which the officers had in view in entering upon his premises. Instead of the search being incidental to the arrest, therefore, the arrest was incidental to if not a mere pretext for the search. The question is whether a search made under such circumstances violates the constitutional rights of the defendant. We think it does."

* * * * *

"On the other hand, there was a reason why the officers desired to make an immediate search of defendant's premises. They had given marked money to the informers with which to purchase cocaine, and an immediate search was expected to reveal the marked money in his possession. That this was the real object of the officers appears from the fact that immediately upon gaining admission to the premises they demanded the right to search, and only placed the defendant under physical restraint when he denied their right to search without warrant."

* * * * *

"Can it be the law that an officer, for the purpose of seeking evidence, may invade the home of a citizen and search it, without the oath or affirmation required by the Constitution, and without having the question of probable cause determined by a judicial officer, upon merely deciding for himself that there is probable cause to believe that some person within the home is guilty of a felonious violation of a revenue act? Shall such determination by the officer of probable cause obviate all necessity for complying with the prerequisites to

the right of search which the Constitution has so carefully prescribed as a safeguard to the privacy of the home? And when it appears, as it does here, that the search and not the arrest was the real object of the officers in entering upon the premises and that the arrest was a pretext for or at the most an incident of the search, ought such search be upheld as a reasonable one within the meaning of the Constitution? Manifestly not: To quote again the language of Mr. Justice Butler: "The search of a private dwelling without a warrant, is, in itself, unreasonable and abhorrent to our laws."

In this regard the law was simply and succinctly stated by this Court in the concluding paragraph in *United States v. Lefkowitz*, 285 U.S. 452 at page 467; 76 L.Ed. 877 at page 884, "*An arrest may not be used as a pretext to search for evidence.*" See also: *McKnight v. United States*, 183 F.2d 977; 87 U.S. App. D.C. 151; *Worthington v. United States*, 166 F.2d 557. True enough, in this case as in the *Henderson* case, *supra* the "marked" money sought by the officers and agents was discovered upon the premises of the suspect. However, "A search prosecuted in violation of the Constitution is not made lawful by what it brings to light. . . ." *Byars v. United States*, 273 U.S. 28 at page 29; 71 L.Ed. 520 at page 522.

Because the entry into petitioner's home during the nighttime without a warrant for the primary purpose of searching for evidence was unreasonable, it was an unwarranted invasion of his right of privacy and security under Amendment IV, aside and apart from the illegal breaking of his door. The marked money seized in petitioner's apartment was, therefore, improperly admitted into evidence and petitioner's conviction should be reversed.

CONCLUSION

For the reasons aforesaid, it is respectfully submitted that the judgment below should be reversed.

Respectfully submitted,

DE LONG HARRIS

Attorney for Petitioner

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No. 126

In the Supreme Court of the United States

OCTOBER TERM, 1957

WILLIAM MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 126

WILLIAM MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the Court of Appeals, *sub nom* *Shepherd v. United States*, are reported at 244 F. 2d 750, 759.

JURISDICTION

The judgment of the Court of Appeals was rendered on October 18, 1956 (R. 254), and a petition for rehearing was denied on December 3, 1956 (R. 255). The petition for a writ of certiorari was filed on January 2, 1957, and granted on May 13, 1957 (353 U. S. 957). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the officers had probable cause to arrest petitioner without a warrant.

2. Whether the officers, who had no other reasonable opportunity to arrest petitioner except in his apartment, were entitled to force their way into the apartment when, after having knocked and identified themselves as police officers, petitioner partially opened the door and then tried to close it when he saw who they were.

3. Whether there was a valid search incident to the arrest.

STATUTES INVOLVED

18 U. S. C. 3109 provides:

The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

STATEMENT

Following a jury trial held in the United States District Court for the District of Columbia, petitioner, and co-defendants Bessie Byrd and her 17-year old brother, Arthur Shepherd, over whom the juvenile court had waived jurisdiction (R. 183, 246), were found guilty under an indictment charging them with federal narcotic violations (R. 35-37). Petitioner was sentenced to consecutive terms of imprisonment of 1 to 4 years on count 1 and 30 months to 8 years on each of counts 2 and 3. He was also fined \$500 on each

of counts 2 and 3; execution of the fines was suspended (R. 232-234). The Court of Appeals affirmed, one judge dissenting (R. 238-253).

Prior to trial, petitioner moved unsuccessfully to suppress certain marked currency allegedly obtained by an unlawful search and seizure (R. 2-3, 34-35). The evidence adduced at the hearing on the motion to suppress, and at the trial, may be summarized as follows:

At 1:35 a. m. on the morning of March 25, 1955, federal narcotics agent Wilson, pursuant to a warrant, arrested one Clifford Reed on a narcotics charge (R. 8-9, 80). Reed, who had given agent Wilson reliable information in the past, told him that he purchased narcotics from petitioner's co-defendant Shepherd whom he would contact at the home of petitioner's mother; that his usual arrangement was to make the contact at around 3:00 a. m. in the morning; that he would give Shepherd \$100 and Shepherd, in turn, would obtain 100 capsules of heroin for him from petitioner and co-defendant Byrd and that on several occasions he had accompanied Shepherd to petitioner's apartment and waited outside while Shepherd went in and obtained the heroin (R. 9-12). Petitioner was known to Wilson because of his previous activities in the narcotics traffic and his conviction in 1953 for violation of the Harrison Narcotic Act (R. 10, 94-95). Reed further advised the agent that he was scheduled to make contact with Shepherd on that particular morning (R. 11).

At about 2:00 a. m., soon after Reed's arrest, Wilson met with several narcotics officers including police

officer Wurms, and trainee agent Lewis, and turned over \$100 in marked currency to Lewis to be used to purchase narcotics from petitioner through Shepherd and Reed (R. 11-12, 53-55, 81-84). According to plan, Lewis gave Reed \$50 of the marked currency to use as a "flash roll," and instructed him to inform Shepherd that Reed's partner was in the cab and would put up an additional \$50 for the purchase of 100 capsules of heroin (R. 56, 67). When Reed returned to the taxi with Shepherd, he returned the \$50 to Lewis, which Lewis then handed over to Shepherd with the rest of the marked funds (R. 57). Shepherd requested that they accompany him to petitioner's house, referring to petitioner by his nickname "Blue" (R. 58, 95). Lewis refused and, instead, the three men proceeded to Reed's home where Reed and Lewis left the taxi. Shepherd told them he was going on to the 1300 block of Columbia Road, and to wait for him until he returned with the "stuff" (R. 58-59). As Shepherd rode away, Lewis and Reed entered Reed's home. This was a prearranged signal to the officers, who had been following close behind, to indicate that Lewis had delivered the marked money to Shepherd (R. 13, 59, 84-85). Thereupon, the officers followed Shepherd as he proceeded alone to petitioner's apartment (R. 13, 87-88, 166-167).

After Shepherd entered the basement hallway leading to petitioner's apartment, agent Wilson looked into the entrance and saw no one in the hallway.¹

¹ There were only three doors off the basement hallway, one leading to the outside, one to petitioner's apartment, and one to the furnace room (R. 98, 110-111).

Shortly thereafter, while on the street outside, Wilson saw a light go on in the furnace room, remain on a short time, and then go off (R. 13-14, 88-90). A few minutes later, Shepherd returned to his taxi, and asked the driver to take him back to Vermont Avenue (R. 14, 89-90, 168). The surveilling officers stopped the taxi soon after it left Columbia Road (R. 14-15, 91-92, 153-154, 168-169). As the cab driver opened the door, the dome light flashed on and Shepherd leaned forward and dropped something under the front seat in which he was sitting (R. 14-15, 92, 138, 154). The officers arrested Shepherd and searched the front seat (R. 14-15, 92, 154-155). Under it, they found a brown manila package containing 100 capsules which were immediately field-tested and found to contain opium (R. 14-15, 92-93, 147-148, 173). This package did not have any of the required federal tax stamps affixed thereto (R. 108, 151). A search of Shepherd failed to turn up the marked currency that agent Lewis had given him to purchase narcotics (R. 16, 94). Although admitting that he came from 1337 Columbia Road,² Shepherd at first denied that the manila package belonged to him (R. 15, 94). A few minutes later, he changed his story, claiming he had picked up the package from behind a fire extinguisher at the Columbia Road address (R. 15-16, 94).

Thereafter, at about 3:45 a. m., the officers returned to the Columbia Road apartment which they knew

² Agent Wilson testified at the trial that Shepherd had told him he had come from "Blue's place," on Columbia Road (R. 94).

petitioner occupied (R. 16, 95, 141).³ At the pre-trial hearing, officer Wurms testified that when he knocked on petitioner's door, a voice from the apartment inquired who was there. He replied in a low voice "Blue [petitioner's nickname]. Police," and repeated it when someone inside again asked "who"? (R. 27).⁴ Both officer Wurms and agent Wilson testified that petitioner, whom they recognized as having been connected with a previous narcotics case (R. 16-17, 27), thereupon opened the door slightly. Then, according to officer Wurms (R. 27):

He took one look at me and tried to slam the door, at which time I grabbed the door and opened it.

In the scuffle, the door-chain was broken (R. 17); see also testimony of officer Wurms at the trial (R. 157-158).⁵ Immediately after entering the apartment, the officers arrested petitioner and co-defendant Byrd (R. 16-17, 19-20, 27, 99-100). In Byrd's pos-

³ All the officers, except officer Wurms, reached the apartment by going through the unlocked basement entrance and the basement hall. Officer Wurms went to the first floor, unlocked with a skeleton key the door to the stairway which led to the furnace room, and entered the basement hall through the furnace room. (R. 29, 157).

⁴ At the trial, officer Wurms' explanation of why he spoke softly was interrupted by defense counsel after Wurms had said, "At a late hour, in the early morning, I——" (R. 157).

⁵ The version of events, as recalled by agent Wilson at the trial, was that after petitioner opened the door part way:

"He said, 'What do you-all want?' And we says, 'Police, you are under arrest, we want in.' He says he was not going to let us in, or something like that, and so Officer Wurms took ahold of the door and pulled it open." (R. 99.)

session the officers found \$100 in currency, \$34 of which was part of the marked currency which had earlier been given to Lewis (R. 17-18, 27-28, 100-101). In the subsequent search of the apartment, the remaining \$66 was located in a bed and in a hatbox (R. 17-18, 101, 150-151). In addition, one thousand empty gelatin capsules, of the same shape and size as those taken from the taxi in which Shepherd had been riding, were found in a dresser drawer (R. 114-115).⁶ The search was completed at about 5:30 a. m. (R. 101-103). Just prior to leaving for the police station with petitioner and his co-defendants, Shepherd said to petitioner: "Blue, it wasn't me that turned you around" (R. 152, 158-159).

In denying the pre-trial motion to suppress, the district judge said that "there is no obligation to secure a warrant. I don't know how you are going to secure a warrant at two o'clock in the morning, anyway, because by the time you hunt up a magistrate and get an affidavit and come back with the warrant, the bird might have flown away * * * on a felony charge an arrest may be made without a warrant, provided reasonable cause is shown. This has been the law for centuries" (R. 31-32). He held that there was "ample proof of probable cause to make an arrest, and therefore the arrest was legal. The arrest being legal, the

⁶ In the furnace room, the officers also found 381 capsules of heroin (R. 111), but the trial judge dismissed the counts (6 and 7) involving violations with respect to this heroin on the ground that the evidence was insufficient to show that any of the defendants occupied or had control of the furnace room (R. 198-199).

search was legal because it was incidental to the arrest." (R. 34-35).

SUMMARY OF ARGUMENT

I

The rule in the District of Columbia is that, where officers have probable cause to believe that a felony is being or has been committed, they are authorized to arrest without a warrant. D. C. Code 4-140, 141; *Wrightson v. United States*, 222 F. 2d 556, 558 (C. A. D. C.). Applying to this case the standard of probable cause announced in *Brinegar v. United States*, 338 U. S. 160, 175-176, the officers clearly had "reasonably trustworthy information" to believe that petitioner had just committed a felony in his apartment and therefore they had reason to arrest him in his apartment. The circumstances precluded any opportunity to secure a warrant of arrest. The arrest occurred at about 4:00 A. M. Plainly, the officers could not have expected to wait until business hours to make the arrest for there was a real danger that petitioner would learn of Shepherd's arrest, especially since Shepherd was Bessie Byrd's younger brother, who could usually be located at petitioner's mother's home. Thus, long before a warrant could have been obtained, petitioner could have fled and hidden or destroyed the fruits of the crime.

This case is entirely unlike *Johnson v. United States*, 333 U. S. 10, and *McDonald v. United States*, 335 U. S. 451, where the officers had no probable cause to arrest before they made the unlawful entry and no circumstances compelled immediate action. Here,

the officers had probable cause to believe that an offense had been committed in petitioner's apartment and that petitioner had participated in it. Moreover, the circumstances required that the officers act upon the information almost immediately after it had become known to them.

Speculation as to the underlying motivations of the arresting officers is beside the point. We submit that the officers acted lawfully even if it be assumed that, in deciding to place petitioner in custody immediately, they were motivated not only by the fear that petitioner might seek to escape but also by the belief that delay would have enabled petitioner to dispose of the narcotics and the marked funds. The fact that arresting officers wish, on valid grounds, to seize the fruits of crime as well as to make an arrest, under circumstances dictating immediate action, does not convert the arrest into a search, where the arrest is made at the place in which the offense was committed by the person arrested.

II

Having probable cause to effect the arrest without a warrant in petitioner's apartment, the officers were authorized to use such reasonable force as was necessary to obtain entry.

A. It is settled that, where necessary to execute a warrant of arrest, law enforcement officers may force an entry into an apartment. In circumstances such as these, the same authority exists where the arresting officer is acting on the basis of probable cause. See, e. g., *Agnello v. United States*, 269 U. S. 20;

Commonwealth v. Phelps, 209 Mass. 396. The power to arrest on probable cause antedated the warrant procedure and has never been replaced by it. Wilgus; *Arrest Without a Warrant*, 22 Mich. L. Rev. 541, 548-550, 673, 685-689. The essential requisite in either case is that only such force as is required by the circumstances may be employed. For this reason, the actual holdings in cases like *Accarino v. United States*, 179 F. 2d 456, 463 (C. A. D. C.), and *McKnight v. United States*, 183 F. 2d 977 (C. A. D. C.), are not inconsistent with our position here. The basis of decision in those cases is that an arrest may not be a mere subterfuge to make a search; in other words, there must be probable cause to arrest *in the apartment* before a forced entry can be made. But, where the person whose arrest is sought on probable cause is in his apartment (and under all the circumstances of this case), the apartment may be entered to make the arrest by the exercise of the limited amount of force used here.

B. If "after notice of his authority and purpose" an officer executing a search warrant is refused admittance, he is authorized, under 18 U. S. C. 3109, to break open a door. We agree with petitioner that, where an arrest is made on probable cause rather than a warrant, these statutory requirements must be met before an officer can force entry into an apartment. However, the facts refute petitioner's contention that the arresting officers in this case failed to comply with these requirements of notice. The police identified themselves when they knocked at petition-

er's door. When he opened the door, he "took one look" at the officer (whom he had previously encountered in connection with an earlier narcotics violation) "and tried to slam the door" (R. 27). In resisting this attempt to bar their entry, the officers broke the door chain. In light of petitioner's immediate reaction to the officers' presence, and the fact that he had just committed a felony, there can be little doubt that he knew who the officers were and why they were there. To say that in these circumstances the officers were required to announce their purpose more formally than they did is to disregard the actualities of the situation. Certainly their purpose was well understood. Cf. *Accarino v. United States*, 179 F. 2d 456, 463 (C. A. D. C.).

In those cases where absolute silence greets an officer's demand for entry, he is not required to state his purpose to the empty air. See, e. g., *People v. King*, 140 Cal. App. 2d 1. There is even less justification to require a more formal announcement of purpose to one who, by his actions, shows he knows the reason for the visit and intends forcibly to prevent entry. Where split-second action is necessary, the law does not require an extended exposition of the obvious. Moreover, here the officers used only such force as needed to prevent petitioner's door from being slammed in their faces. The extent of the damage was a broken door-chain.

III

Since the arrest in this case was lawful, it follows that the search incident thereto was valid. *Harris v.*

United States, 331 U. S. 145, 150-151. The search, which followed immediately after the arrest, lasted no more than an hour and a half; some of the marked money was found on the person of Byrd who was also arrested and the remainder was located in the same room in which the arrest was made. The search met the test of reasonableness set forth in *United States v. Rabinowitz*, 339 U. S. 56, 64, 68.

In addition, the search did not offend the stricter requirements of *Trupiano v. United States*, 334 U. S. 699, 708, that there be “* * * something more in the way of necessity than merely a lawful arrest”. The necessity permitting a search without a warrant as incident to a lawful arrest, found lacking in *Trupiano*, was present here. For unless the agents moved with speed, there can be little doubt that the marked money would have been destroyed or effectively concealed.

ARGUMENT

As we view it, the basic question in this case is whether the officers had probable cause to arrest petitioner in his apartment. If they did—and we believe the facts clearly established that they did—the officers were authorized to use such force as necessary to accomplish that lawful purpose. Hence, they were authorized to enter petitioner’s apartment forcibly when he sought to bar their entry after they had identified themselves as police officers, and when the circumstances indicated that petitioner clearly understood, if he was not explicitly told, that their purpose was to arrest him. Accordingly, the particular and limited search incident to that lawful arrest was valid,

and the marked money seized was properly admitted in evidence.

I

HAVING PROBABLE CAUSE TO BELIEVE THAT PETITIONER HAD JUST COMMITTED A FELONY IN HIS APARTMENT, THE POLICE OFFICERS WERE FULLY AUTHORIZED TO ARREST HIM IMMEDIATELY IN THE APARTMENT WITHOUT A WARRANT

Consistent with the rule at common law (*Kurtz v. Moffitt*, 115 U. S. 487, 504; *Carroll v. United States*, 267 U. S. 132), the law of the District of Columbia is that officers having probable cause to believe that a felony is being, or has been, committed are empowered to arrest without a warrant. D. C. Code 4-140, 141; *Wrightson v. United States*, 222 F. 2d 556, 558 (C. A. D. C.); *Newgahr v. United States*, 177 F. 2d 658 (C. A. D. C.), certiorari denied, 338 U. S. 936; *Shettel v. United States*, 113 F. 2d 34 (C. A. D. C.); *Maghan v. Jerôme*, 88 F. 2d 1001 (C. A. D. C.); *United States v. Jackson*, 149 F. Supp. 937 (D. C. D. C.).

As this Court has recently observed in *Brinegar v. United States*, 338 U. S. 160, 175-176: "Probable cause exists where 'the facts and circumstances within their [the officers'] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in

¹ Precisely the same criterion now applies under federal law. Thus, 26 U. S. C. 7607, added July 18, 1956, gives a narcotic agent authority to make an arrest where he has "reasonable grounds to believe that the person to be arrested has committed" a narcotics offense.

the belief that an offense has been or is being committed. *Carroll v. United States*, 267 U. S. 132, 162." From the rapid series of events occurring on the morning of March 25, 1955, the officers had "reasonably trustworthy information" to believe that petitioner had committed a felony in his apartment. A summary of the events of that morning makes this clear:

At 1:30 A. M., the officers learned from Reed—who had provided reliable leads in the past—that he had been purchasing narcotics from petitioner's agent, Shepherd. Reed advised the officers that the sales were being conducted from petitioner's apartment by petitioner and Shepherd's sister, Bessie Byrd. Reed also stated that he had an appointment that very night, at about 3:00 A. M., to meet Shepherd and consummate another sale. The officers knew petitioner and his co-defendant Byrd, knew of petitioner's past narcotics conviction, and of his previous dealings in narcotics. Taking advantage of this opportunity to break up a narcotics ring of which they had learned on the very night that a sale was to take place, the officers sent Reed off on his rendezvous accompanied by agent Lewis. The agent was given \$100 in marked currency to be delivered to Shepherd for 100 capsules of narcotics. The officers observed the meeting with Shepherd, and saw Lewis' signal that the money had passed. They then followed Shepherd to petitioner's home. They observed Shepherd enter, saw a light go on and then go off shortly before he departed. They followed Shepherd for a few blocks and then stopped his cab. In it, they found a package he had dropped

under his seat containing 100 capsules which were immediately field-tested on the scene and were found to contain opium. The \$100 in marked funds that he had previously been given was missing. Shepherd at first denied that the capsules were his, but then changed his story and claimed that he had found them behind a fire extinguisher in the basement entrance leading into petitioner's apartment (see the Statement, *supra*, pp. 3-5).

It was at this point, after a series of events which lasted no more than three hours in the early morning, that the validity of Reed's information was established, and that the officers proceeded to petitioner's apartment to arrest him. We think that they were amply justified in concluding from these events that a felonious sale of narcotics had taken place in petitioner's apartment a few minutes before, and that petitioner was a participant. Further, they had reason to believe that a continuing felony was taking place in that petitioner was illegally in possession of additional narcotics in violation of the law.⁸ Against this background, the officers had more than ample grounds to make an arrest immediately, and, as we shall show, delay would have seriously jeopardized, if it would not have precluded opportunity to arrest and establish the guilt of the principal figure in this narcotics operation.

⁸ As it later turned out, 381 additional capsules of heroin were found in the basement furnace room adjoining petitioner's apartment. However, these capsules were suppressed on the ground that there was no showing that the furnace room was in petitioner's control (R. 198-199).

Where probable cause exists, a warrant to arrest is not required under District of Columbia law (*supra*, p. 13) even if opportunity to obtain one exists. Cf. *Trupiano v. United States*, 334 U. S. 699. And at four o'clock in the morning, there was no real opportunity to obtain a warrant. Moreover, the hour at which the narcotics sale was to take place was one deliberately chosen by members of this ring (*supra*, p. 3); and they should not be permitted to derive an advantage because they carried on their illicit traffic at times when immediate resort to judicial authority is not feasible. In any event, the police were, on the facts of this case, justified in not waiting to make an arrest until business hours, or at least until the necessary papers could be prepared and an official authorized to issue warrants could be located and persuaded to act at that unusual hour. There was a real likelihood that petitioner would learn of the arrest of his runner, Shepherd, before long and would take this fact as warning. This likelihood was even greater than would be presented by the usual "grapevine" methods and the principal-agent relationship between petitioner and Shepherd; for Shepherd was the younger brother of Bessie Byrd, with whom petitioner lived, and Shepherd could usually be located at petitioner's mother's home (R. 12). Long before a warrant could be obtained, petitioner could have hidden himself, the narcotics, and the money. There was thus good reason for the police to seek to arrest petitioner immediately; and the place where the arrest had to be made was where petitioner could

then be found—and where he had committed the felony—in his apartment.

Thus, this case is materially different from *Johnson v. United States*, 333 U. S. 10, and *McDonald v. United States*, 335 U. S. 451, in both of which this Court found that officers had no probable cause to arrest before they made the wrongful entry. In *Johnson*, the Court pointed out that there was no probable cause to arrest any particular person until after the officers had entered the room. Here, the officers had probable cause, based on the statements of Reed and Shepherd, and the events that the officers had themselves witnessed, to believe that *petitioner*, then in his apartment, had committed a felony. In *McDonald*, in marked contrast to the facts here, the officers, after two months of surveillance, still did not have the evidence of gambling which they were seeking until they had illegally entered the rooming house in which that petitioner lived and gained access to the hallway from which the lottery operations could be observed.

In this case, on the other hand, when the officers sought to gain access to petitioner's apartment, they had obtained, in the few hours immediately preceding the arrest, information leading to probable cause to believe that an offense had just been committed by petitioner in that apartment. They also had good reason to believe that petitioner was at that moment still in the apartment. The sum of these factors is that the officers had sufficient reason to arrest petitioner in the apartment. They were faced with the

choice of waiting several hours to get a warrant or of seeking immediate entry. As we have shown, they had reason to believe that, if petitioner had not yet learned of Shepherd's arrest, he would have word of it in a short time (see *supra*, p. 16) and would take steps to prevent his own apprehension and arrest.

The record, of course, does not disclose the precise reasoning of each of the officers who acted together in response to the situation with which they were suddenly confronted. The crucial issue is whether the facts themselves, as known to the officers, justified the action which they took, and speculation as to the underlying motivation of the officers is pointless. Thus, the result is the same even if we assume that the decision to make an immediate arrest was influenced, in part, by the fear that by business hours petitioner could have disposed of the marked money and additional narcotics. The fact that police officers might have wished, on valid grounds, to seize fruits of the crime as well as to make an arrest does not convert the arrest into a search. The fact remains that there was good reason to arrest petitioner immediately in the place where the offense had just been committed, namely, his own apartment. In actual fact, the arrest preceded the search and was validly based on probable cause—entirely without regard to the results of that search.

II

SINCE THE OFFICERS HAD AUTHORITY TO MAKE AN IMMEDIATE ARREST OF PETITIONER IN HIS APARTMENT, THEY HAD AUTHORITY TO USE THE LIMITED FORCE HERE EMPLOYED TO MAKE AN ENTRY FOR THIS PURPOSE WHERE NECESSARY TO OVERCOME PETITIONER'S PHYSICAL RESISTANCE.

A. WHERE THERE IS PROBABLE CAUSE FOR ARREST WITHOUT A WARRANT IN A HOME, THE OFFICERS ARE JUSTIFIED IN USING THE FORCE NECESSARY TO EFFECTUATE THE ENTRY.

Petitioner concedes (Pet. 24), and the law is clear, that an officer having lawful authority to arrest may, if necessary, break into a person's apartment to effect the arrest. He may, where necessary, break in either pursuant to a valid warrant⁹ or where he has probable cause to believe that a felony has been committed. See, *e. g.*, *Agnello v. United States*, 269 U. S. 20; *Martin v. United States*, 183 F. 2d 436 (C. A. 4), certiorari denied, 340 U. S. 904; *Mattus v. United States*, 11 F. 2d 503 (C. A. 9); *Appell v. United States*, 29 F. 2d 279 (C. A. 5); *Mullaney v. United States*, 82 F. 2d 638, 641 (C. A. 9); *United States v. Dean*, 50 F. 2d 905, 906 (D. Mass.); *United States v. Chin On*, 297 Fed. 2d 531, 533 (D. Mass.); *Commonwealth v. Phelps*, 209 Mass. 396; *Argetakis v. State*, 24

⁹ See, *e. g.*, *United States v. Faw*, Fed. Cas. No. 15,079; *Kelsy v. Wright*, 1 Root 83 (Conn., 1783); *State v. Shaw*, 1 Root 134 (Conn., 1789); *Hawkins v. Commonwealth*, 53 Ky. 395; *Barnard v. Bartlett*, 64 Mass. (10 Cush.) 501; *Commonwealth v. Irwin*, 83 Mass. (Allen) 587; *Commonwealth v. Reynolds*, 120 Mass. 190; *State v. Mooring*, 115 N. C. 709; *State v. Shook*, 224 N. C. 728, 733-734; *State v. Smith*, 1 N. H. 346; and cases collected in 5 A. L. R. 263.

Ariz. 599, 606; *Shanley v. Wells*, 71 Ill. 78, 82; *McLennon v. Richardson*, 81 Mass. 74, 76; *Smith v. Tate*, 143 Tenn. 268, 275-276; 1 Wharton's Criminal Procedure (10th ed.) § 51; Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 541, 798, 800-807. Historically, the power to arrest on probable cause without a warrant preceded the development of the warrant procedure and has never been supplanted by it. In this case, therefore, the officers who had personal knowledge of circumstances which gave rise to probable cause and proceeded on that basis had the same authority to execute an arrest as would an officer who had procured a warrant. See Wilgus, *Arrest Without a Warrant*, 22 Mich. L. Rev. 541, 548-550, 673, 685-689, 798, 800-803.

In *Agnello v. United States*, 269 U. S. 20, the arrest was made without a warrant at the home of Alba, into which the agents "rushed in" (269 U. S. at 29), after viewing from outside what appeared to be a narcotics transaction; there was no challenge to the validity of the arrest. And in *Martin v. United States*, 183 F. 2d 436 (C. A. 4), certiorari denied, 340 U. S. 904, the officer having probable cause to believe that the accused was violating the liquor laws entered the garage, arrested him, and seized the liquor. The Court held: "Nor can it be doubted that the officer having probable cause for the arrest had authority to enter the premises and take the probationer into custody" (183 F. 2d at 439). Similarly, see *Mattus v. United States*, 11 F. 2d 503 (C. A. 9), where the search incident to the arrest was upheld, despite the fact that the arrest-

ing officers forced an entry on the ground that they had reasonable cause to believe that a narcotics sale had occurred in the house.

We think the dissenting judge below was in error in assuming that, at least in such circumstances as those of this case, the right of officers to make a forcible entry in order to arrest is less when the arrest is without a warrant than when it is made pursuant to a warrant. In neither case, of course, is it permissible to use more force than is necessary under the circumstances. For that reason, we have no quarrel with the actual holdings in such cases as *Accarino v. United States*, 179 F. 2d 456, 463 (C. A. D. C.), where the officers had had the defendant under surveillance for a number of days, and had had reasonable opportunity to arrest him long before he entered his home, but nevertheless broke down his door without announcing their purpose, having no reason to believe that a felony had been committed in the premises. The arrest was properly held to be merely a subterfuge to make a search. Again in *McKnight v. United States*, 183 F. 2d 977 (C. A. D. C.), the officers could have arrested the accused on the street. However, they were given specific orders not to arrest him until he entered a certain house. They had no probable cause to arrest him in the house, and the arrest was merely an excuse to search. Similarly, see *Gibson v. United States*, 149 F. 2d 381, 383 (C. A. D. C.), certiorari denied *sub nom O'Kelley v. United States*, 326 U. C. 724 (where the arrest, not on probable cause, was merely a pretext to make a search); and see also *Gatewood v. United States*, 209 F. 2d 789, 790 (C. A. D. C.) (where

there was no probable cause to seek to make the arrest in the apartment and where the officers gained entry by posing as "Western Union"); *Nueslein v. District of Columbia*, 115 F. 2d 690, 693 (C. A. D. C.) (no probable cause to arrest). The thrust of these cases is, not that an entry may never be made into an apartment to arrest on probable cause, but rather that the authority to arrest cannot be used as a ruse to get into a place where the authorities would otherwise have no occasion to be. In other words, there must be probable cause to arrest *in the apartment* to justify forcible entry without a warrant, particularly where there has been opportunity to arrest outside the apartment. But it does not follow from these cases that, where an immediate arrest is justified—as we have shown it was here—and where the person sought is in his home at the time—that the home may not be entered. The numerous cases cited above (*supra*, pp. 19-20) show that, where there is a good reason to believe that a crime is being or has just been committed by a person in his home, the officers may properly enter the home, by such force as is necessary, in order to make the arrest.

B. THE OFFICERS MADE KNOWN THEIR AUTHORITY AND PURPOSE BEFORE FORCING ENTRY INTO PETITIONER'S APARTMENT

Petitioner seemingly concedes that authority existed to make a forced entry on probable cause to arrest, but argues that here that authority was improperly exercised (Pet. Br. 22-30). He contends that the conditions under which a forced entry to arrest on probable cause may be effected are to be determined under 18 U. S. C. 3109 (providing that an officer

executing a search warrant my break open a door only if, "after notice of his authority and purpose," he is refused admittance, and that there was no such compliance since the officers did not specifically articulate their purpose. We agree that the validity of the entry should be tested under the standard of 18 U. S. C. 3109. We disagree however with petitioner that the arresting officers did not comply with the terms of the statute.¹⁰ We submit that such compliance is evident from the events immediately preceding the officers' forced entry.

Following Shepherd's arrest and search—which turned up the 100 capsules of narcotics in place of the \$100 in marked funds—the police officers went immediately to petitioner's apartment. All the officers except Wurms reached the apartment by way of the unlocked basement door. Wurms entered by way of the first floor, using a skeleton key to open a door leading to a stairway down to the basement. When all the officers met in front of petitioner's apartment, Wurms knocked twice and identified the

¹⁰ The substance of 18 U. S. C. 3109 was originally in the Espionage Act of 1917, 40 Stat. 229. It "was based upon the New York law on this subject [now Code Cr. Proc. § 799], and follows generally the policy of that law." Conf. Rep. No. 69, 65th Cong., 1st Sess., p. 20; 55 Cong. Rec. 3305, 3307. In New York, under a different section of the code, precisely the same authority to break in—if after "notice of his office and purpose," he is refused entry—is given to a police officer where he arrests solely on probable cause. N. Y. Code Cr. Proc. § 178. By a parity of reasoning, it should follow that, by defining the incidents of the authority to break in under a search warrant, Congress did not intend to exclude a like entry made on probable cause for arrest.

officers as police. Thereupon, the accused opened the door slightly and—according to officer Wurms—“He took one look at me and tried to slam the door * * *” (R. 27). The officers resisted this effort, succeeded in pulling the door open, and in the process broke the door-chain. They immediately entered and arrested petitioner and co-defendant Byrd. They found \$34 of the marked funds in Byrd’s possession and the remaining \$66 in a hat box and in a bed in the room in which petitioner and Byrd were arrested (see the Statement, *supra*, pp. 6-7).

During this split-second transaction in which the officers sought and were denied entry, they sufficiently identified themselves and made known their purpose to petitioner. In the first place, they specifically identified themselves as police officers when they knocked. Secondly, the circumstances under which they sought entry in the early hours of the morning and petitioner’s instantaneous resistance to their entry certainly points up that he knew their purpose immediately. He had previously encountered one of the officers in connection with an earlier narcotics violation. The very presence at the door of the officers was sufficient to advise petitioner more graphically than anything else that his narcotic business was at an end. His almost instinctive attempt to bar their entry after they had identified themselves as police emphasizes that he had, at once, realized that he had been detected and that the officers were there to arrest him. It would be wholly unrealistic to say that the officers had not made their purpose known because

they did not more formally announce that they were there to arrest him." In this case, at least, it seems fair to say that petitioner's action amply indicated that the officers had communicated their purpose to him. As observed by the court below, " * * * the exact course to be taken by the officers in a split second of resistance was not the subject of a blueprint" (R. 250).¹²

Faced with petitioner's energetic attempt to bar their entrance, there seems little reason to say that the

¹¹ As noted *supra*, p. 6, fn. 5, agent Wilson testified at the trial that petitioner was told, in answer to an inquiry, "Police, you are under arrest, we want in." And of course, in passing upon the denial of a motion to suppress, the reviewing court may properly consider the whole record, not merely the evidence adduced prior to the ruling. *Carroll v. United States*, 267 U. S. 132, 162, *Rent v. United States*, 209 F. 2d 893, 896 (C. A. 5).

¹² The argument that officer Wurms' initial entry into the basement by means of a skeleton key was also unlawful is without merit. He did not climb through a window into an occupied room as in *McDonald v. United States*, 335 U. S. 451, but rather used an empty stairway and furnace room, invading no one's privacy. See p. 6, *supra*, fn. 3. Officer Wurms could have entered through the basement with the rest of the officers. Instead, without interfering with any of the tenants of the building, he took a different route, probably to cut off any path of escape which petitioner might otherwise have available before the officers reached his apartment. This certainly was not an unlawful entry.

Moreover, as we have noted, *supra*, p. 17, the *McDonald* case is also distinguishable on the grounds that the officers in that case had had the defendant under surveillance for two months, during which time a warrant could have been obtained if probable cause existed. Here, the officers were responding to a situation demanding immediate action which had just become known to them and which provided probable cause to believe that the felony had just been committed in the apartment.

officers were required to articulate more specifically their purpose when petitioner obviously knew why they were there. The officers had only the mere opportunity to identify themselves in the manner indicated by their testimony before petitioner demonstrated by his violent attempt to bar their way that he knew their objective. Any hesitation on their part might have given petitioner some precious moments to attempt an escape. Under these circumstances, their entry complied with the teaching accepted in *Accarino v. United States*, 179 F. 2d 456, 463, that:

Before doors are broken, there must be a necessity for so doing, and notice of the authority and purpose to make the arrest must be given and a demand and refusal of admission must be made, *unless this is already understood, or the peril would be increased.* [Emphasis added.]

In short, the officers were required to proceed as the circumstances dictated. Here, the circumstances did not permit of unhurried procedure. From petitioner's immediate reaction to their presence, the officers could take it that he well understood the purpose of their call. Where split-second action is necessary, the law does not require an extended exposition of the obvious. All the officers did was to take action to prevent petitioner from slamming the door in their faces. All the damage they did was to a chain on the door. They were justified in using this limited degree of force to meet petitioner's obvious aim to bar them from entering to arrest him.

State decisions hold that, where absolute silence greets an officer's demand for entry, he is not required to announce his purpose to the air. See, *e. g.*, *Thigpen v. State*, 51 Okla. Cr. 28; *Collins v. State*, 184 Tenn. 356; *People v. King*, 140 Cal. App. 2d 1, 8-9; *People v. Maddox*, 46 Cal. 2d 301, 306, certiorari denied, 352 U. S. 858; cf. *Hiller v. State*, 190 Wisc. 369, 375-376. And compare *Woods v. United States*, 240 F. 2d 37 (C. A. D. C.), holding that where the officers did not demand entry but merely knocked they had no authority to break in where there was no answer, with *United States v. Freeman*, 144 F. Supp. 669, 670 (D. C. D. C.), where the court held that 18 U. S. C. 3109 had been complied with because the officer, unlike the situation in *Woods*, gave notice of his authority before he broke in. Still less should officers be required to announce their purpose to one who shows by his actions that he knows that purpose and intends to do what he can to prevent its accomplishment.

III

SINCE THE ARREST WAS VALID, THE SEARCH INCIDENT TO ARREST WAS LAWFUL

As this Court noted in *Harris v. United States*, 331 U. S. 145, 150-151, "[s]earch and seizure incident to lawful arrest is a practice of ancient origin and has long been an integral part of the law-enforcement procedures of the United States and of the individual states." See also *United States v. Rabinowitz*, 339 U. S. 56, 60; *Agnello v. United States*, 269 U. S. 20, 30; *Carroll v. United States*, 267 U. S. 132, 159; *Weeks v. United States*, 232 U. S. 383, 392.

Upon entering the apartment, the officers put petitioner and Byrd under immediate arrest. The search then followed. On Byrd's person the officers found \$34 of the marked funds. The remaining \$66 was found in a hat box and in a bed located in the same room where the arrest was made. The entire search, including that of the furnace room, took no more than an hour and a half (R. 101-107). Clearly, "the total atmosphere of the case" is such to show the search to be reasonable under the rule of *United States v. Rabinowitz*, 339 U. S. 56, 64, 66.

More than that, however, the search here did not offend the more stringent test announced in *Trupiano v. United States*, 334 U. S. 699, since there was " * * something more in the way of necessity than merely a lawful arrest" (*Id.* at 708) to warrant immediate search of the premises where there was good reason to believe that an offense had just been committed. The same reason that justified an immediate arrest of petitioner—the prior arrest of Shepherd—gave the officers good reason to fear that, if they should wait until the next morning to procure a search warrant, the marked funds would have long since been destroyed or effectively concealed.

The circumstances in which the search was made in this case are therefore in marked contrast to those in *Trupiano*. There, the law enforcement officers had observed the operation of a still for some months before the arrest; they knew the precise nature and location of the contraband, and that it was of a type that could not have been dismantled and removed before

a warrant could be secured. Despite this, no search warrant was obtained before the officers arrested and searched. On these facts, the Court held that there was “* * * no reason * * * why the arresting officers could not have armed themselves during all the weeks of their surveillance of the locus with a duly obtained search warrant—no reason, that is, except indifference to the legal process for search and seizure which the Constitution contemplated” (334 U. S. at 708). Here, on the other hand, there was no prior opportunity to obtain a warrant during the few short hours in the early morning when the crime was detected. Unlike *Trupiano*, there was, under the circumstances of this case, “* * * some other factor in the situation that would make it unreasonable or impracticable to require the arresting officer to equip himself with a search warrant” (*id.*). That factor was that, unless the officers acted immediately, the petitioner undoubtedly would have disposed of the marked money.

CONCLUSION

For these reasons, it is respectfully submitted that the judgment below should be affirmed.

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